Official Gazette

REPUBLIC OF THE PHILIPPINES

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OFFICIAL WEEK IN REVIEW

January 25.—EARLY this morning, the President and the First Lady heard mass at the presidential yacht *Santa Maria.*

At 8 a.m., the President left the yacht which was anchored just off the Manila Bay breakwater and proceeded to an undisclosed place to complete the draft of his annual message to Congress.

The President finally okeyed the draft of his speech about 2 p.m., by which time he ordered that it be taken to the Bureau of Printing to be set into print.

President Garcia then motored to his Bohol Avenue residence in Quezon City at 5 p.m. He spent the night there.

THE President will recommend to Congress the further simplification of judicial procedures with the view to rendering more effective and expeditious the administration of justice, it was announced by Press Secretary Jose C. Nable today.

The President said that the nation's judicial processes, characterized by century-old formalistic rituals, often brought about interminable delays in the settlement of litigations and the resultant clogging of court dockets.

The Chief Executive expressed desire to have unessential formalities dispensed with so that the presiding magistrate might get to the issues involved as soon as possible and effect prompt adjudication of controversies.

Noting the marked increase in the rate at which cases had been disposed by the courts during the past year, the President nevertheless saw the need for devising ways of insuring swift disposition of cases because of the steady increase in population and the proportionate increase in the number of litigations expected to be brought before the courts of justice.

He said that everyone seeking it should be given his day in court and accorded his right to a fair and speedy trial.

The President will also recommend to Congress the enactment of remedial measures to improve conditions obtaining in penal institutions and to put a stop to the apparent uneasiness among inmates of the state penitentiaries.

January 26.—THIS morning, the President received members of the joint committee from the Senate and the House of Representatives, who called on him at Malacañang to inform him that this year's session of Congress had been formally opened.

Composing the joint legislative committee were Sens. Lorenzo M. Tañada, Emmanuel Pelaez, and Pacita M. Gonzalez, and Reps. Ramon Bagatsing, Justiniano S. Montano, and Valeriano Yancha.

The legislators were ushered to the music room of Malacañang by Legislative Secretary Vicente Logarta, Assistant Executive Secretary Enrique C. Quema, and Lt. Col. Emilio Borromeo, senior presidential aide.

President Garcia reviewed with his callers his pet administration bills which he wanted enacted during this session, particularly those on the synchronization of elections, habeas corpus, multiple currency reserve system, and revenue measures.

The President's first caller, was Ambassador Carlos P. Romulo, who reported briefly to the Chief Executive. No details were released by Malacañang on the subjects taken up by Romulo with the President.

PRESIDENT Garcia this afternoon delivered his state-of-the-nation message before a joint session of Congress, formally marking the opening of the regular session of the Congress.

The President was warmly applauded 12 times by the senators and congressmen, who listened intently to his recommendations for legislative implementation.

The First Lady accompanied the President to the session hall of the House of Representatives.

The President started reading his message promptly at 5 o'clock this afternoon and finished with it after an hour and thirty two minutes.

As the President and the First Lady entered the session hall, the senators and the congressmen and the people who packed the galleries gave the First Couple a standing ovation.

From Congress, the President and the First Lady returned to Malacañang.

THE President today issued Proclamation No. 554, declaring the period from February 1 to 7, 1959, as "Aid to the Blind and the Handicapped Week."

The President set aside the first week of February as an annual fund raising week for the benefit of the blind and the handicapped to be conducted by the Social Welfare Administration. The money to be raised during the week will be called the "Blind and Handicapped Fund" and will be controlled and administered by the Social Welfare Administrator.

In order to insure the success of the fund drive, the President called upon all citizens and residents and all civic-spirited organizations and associations to lend their support to the campaign.

January 27.—PRESIDENT Garcia this morning congratulated executives of the Development Bank of the Philippines for having implemented one of the most important objectives of his administration; namely, helping the small farmers.

The Chief Executive was the principal speaker at the opening session of the three-day intra-agency conference of DBP officials, branch managers, agency heads, and agricultural appraisers held in the social hall of Malacañang.

Other speakers were DBP Chairman Gregorio S. Licaros, who outlined the bank's ₱50 million agricultural loan program for 1959 to help bolster the productive potential of the rural areas, and NEC Chairman Jose C. Locsin, who talked on the NEC-sponsored three-year socio-economic program for the masses.

In a 30-minute off-the-cuff speech, the President emphasized that the establishment of a sound agricultural economy was a requisite for the success of any country's program of industrialization.

He told the conferees that Congress and the Administration were aware that the success of this country's agricultural development program rested principally upon the small farmers who comprised approximately 65 per cent of the population of the Philippines.

The successful implementation of the new financial assistance program of the DBP specially geared for the small farmers will answer a long-felt need, he added.

He called on bank officials to help the farmers by minimizing red tape in the processing of loan applications so that the farmers will receive the money when they need it most.

President Garcia also traced the evolution of the DBP from its predecessor, the Rehabilitation Finance Corporation, which, he said, had already accomplished its mission of helping the nation recover from the ravages of World War II.

The Development Bank of the Philippines, he said, is now charged with helping in the exploitation and development of the country's vast agricultural and industrial potential. For this reason, Congress has seen fit to provide the DBP with sufficient funds to carry out this objective; namely, 50 per cent of the proceeds from the sale of reparations items accumulated through a period of 20 years.

DBP Chairman Licaros enumerated the objectives of the joint NEC-DBP overall economic development program as follows:

(1) To accelerate development in agriculture through extension of readily available and adequate credit facilities to farmers;

(2) To provide increased job opportunities in the provinces and thus prevent the influx of additional unemployed to urban centers of the country; and

(3) To maximize the social and economic benefits accruing from every peso invested in this type of loans.

THE PRESIDENT received officials of the International Harvester Company and the Merck Sharp and Dohme International, who paid separate courtesy calls at Malacañang this morning.

Hugh A. Davies, vice-president of the International Harvester Export Company of Chicago, called on the President accompanied by Paul Wood, president of the IH Company of the Philippines.

Davies had helped in the preparation for the reception of President and Mrs. Garcia in Chicago during their state visit to the United States last year.

President Garcia received a standing invitation from Davies and Wood to view the display of IH farm equipment at the company's office on Marques de Comillas Street.

He was also informed of their appreciation for the cooperation of Philippine Machine Shop operators who turn out parts for IH equipment.

The President was told that the company had successfully tried this program in other underdeveloped countries of the world.

Antonie T. Knoppers, Huskel E. Kaireb, and Walter Peyer, president, vice-president, and director, respectively, of the Merck, Sharp, and Dohme International, well-known drug manufacturers, also paid a courtesy call on the President.

They were accompanied by Yao Shiong Shio, president of the drug laboratory bearing his initials and distributor in the Philippines of Merck, Sharp, and Dohme products.

Minister Nicanor Roxas, former Philippine consul general to San Francisco, received final instructions from President Garcia prior to his departure for the Hague to assume his new post as envoy extraordinary and minister plenipotentiary to the Netherlands.

President Garcia also received Cebu Reps. Sergio Osmeña, Jr., and Isidro C. Kintanar with whom he had an exchange of views on the economic problems of the country.

Other presidential callers this morning were Don Manolo Elizalde and Carl Landegger, and Provincial Board Member Lino R. Azicate of Catanduanes and Salvador Madarang of Zambales, who requested the Chief Executive to set aside a date for the officers of the League of Provincial Board Members of the Philippines to call on him.

PRESIDENT Garcia directed Commerce Secretary Pedro C. Hernaez today to shelve all applications for barter allowed under "Republic Act 1410, better known as the no-dollar import law.

The presidential directive was handed down less than 24 hours after his state-of-the-nation address was delivered before a joint session of Congress in which he strongly recommended the immediate repeal of the law. The presidential directive came a few hours after the Senate had unanimously voted to repeal the law in its session today.

The directive to freeze all applications for barter was made to strengthen President Garcia's bid to save government revenues which dropped by about $80 million as a result of the implementation of the law last year.

The President took occasion to reiterate that the importation duty-free of personal effects by returning residents had not only deprived the government of substantial revenue but had also resulted in the commission of abuses and frauds.

This temptation to graft and corruption must be eliminated, the President said.

President Garcia underscored the importance of repealing the law when he said that its implementation had given rise to over-shipment, down-grading and under-pricing of exports, and over-pricing of imports.

This procedure, President Garcia said, enabled the salting away of millions of dollars in foreign countries which should have gone to the government to boost its dollar reserves.

The repeal of Republic Act 1410 is one of 14 recommendations submitted by the President to Congress for congressional approval during its session which opened yesterday.

THE President certified today to the Court of Industrial Relations the labor dispute between the Philippine Air Lines management and the employees and workers affiliated with the Philippine Air Lines Employees Association (PALEA).

In certifying the dispute, the Chief Executive requested the CIR to take immediate steps under the law in order to effect a solution mutually beneficial to both the management and the employees.

The President pointed out that the existing strike, with the attendant picketing, is jeopardizing the national interest because the service of the Philippine Air Lines is indispensable to the postal service of the country, national defense, air transportation of passengers and cargo, including newspapers and general merchandise.

The Chief Executive stressed that the Philippine Air Lines was the only scheduled air carrier and the only carrier of air mail throughout the country.

The President also took cognizance of the role PAL plays in furnishing maintenance work, ground handling, food service for foreign carriers like Pan American World Airways, Scandinavian Airways System, KLM, Garuda Indonesian Airways, Air de France, and Vicil Air Transport, saying stoppage of work would seriously disrupt, if not paralyze, international transportation.

The President said the strike would greatly handicap the country's defense potential since PAL also maintains and overhauls aircraft of the Philippine Air Force, the U. S. Air Force, and the U. S. Navy.

January 28.—MONSIGNOR Egidio Vagnozzi, Papal Nuncio to the Philippines, paid a farewell call this morning on the President at his residence on Bohol Avenue in Quezon City.

Msgr. Vagnozzi presented as his farewell gift to the President a priceless antique vase dating back to around 2 or 3 B.C. which had been found in the excavations near Foggia, Polie, Italy.

The apostolic nuncio is scheduled to leave Friday on board the *S.S. Cambodge* for Rome for consultation and to receive final instructions before proceeding to his new assignment in Washington, D. C. He served in the Philippines for almost ten years, having arrived in this country in 1949 as papal legate.

President Garcia will honor the departing dean of the local diplomatic corps with a despidida state dinner this evening at Malacañang on the eve of his departure.

Meanwhile, a five-man team from the Filipino Shipowners' Association called on President Garcia this morning to receive further instruction before leaving for Japan sometime this week to assist Chairman Jose Rodriguez and General Manager Jose Panganiban of the National Development Company in the preparation of specifications for the final contract to purchase 12 ocean-going vessels from Japan. The vessels will be the nucleus of the Philippines' merchant marine fleet, which is intended to boost local industries.

Members of the FSA team going to Japan are Col. Generoso Tanseco of the General Shipping Co., FSA president; Roberto Ho of the Magsaysay Lines, FSA vice-president; Mariano Acuña of the Ace Lines; Leocadio de Asis of Delgado Bros.; and A. A. R. Botelho of the Botelho Shipping Co.

Shigeo Horie, president of the Bank of Tokyo, also paid a courtesy call on President Garcia. He was accompanied by Y. Yamane, manager of the Bank of Tokyo branch in Manila; M. Hashimoto, manager of the Bank of Tokyo branch in Hongkong; and S. Yokoyama, member of the board of directors of the Bank of Tokyo.

Other callers of the President were Nicolas Laude, Antonio Araneta, and DBP Chairman Gregorio S. Licaros.

THE CABINET approved this afternoon the sale of the ₱14 million Maria Cristina Fertilizer Plant in Lanao at a public bidding, in line with the Administration's policy of withdrawing from competitive business when "private capital is willing to take over."

Malacañang said the plant was assessed at ₱14,643,955.48.

The Maria Cristina Fertilizer Plant will be the third government corporation to be disposed or placed in the market by the government.

The first corporation sold by the government was the Bacnotan Cement Plant, a subsidiary of the Cebu Portland Cement Company, and the government shares in the Philippine Electrical Manufacturing Company.

In approving the sale of the fertilizer plant in Lanao, the Cabinet imposed the following conditions:

1. Sale must be made at a public bidding;
2. Only Filipinos and Americans or Filipino or American-controlled corporations can participate in the public bidding;
3. The successful bidder must enter into a contract with the National Power Corporation to purchase power and energy from the NPC at specified rates; and
4. Ordinary workers of the plant must be absorbed by the new owner.

The Cabinet members said that in the sale of government corporations, the plight of the workers must be taken into account.

When asked to comment on the charges filed in court against Finance Secretary Jaime Hernandez, President Carlos P. Garcia said that he will study the matter in consultation with Justice Secretary Jesus Barrera.

THIS EVENING President Garcia directed the Department of Justice to study the possibility of suspending Secretary of Finance Jaime Hernandez following his indiction in the Manila court of first instance for "possession of prohibited interest by a public officer."

Secretary Barrera conferred with President Garcia this evening on the prosecution of Secretary Hernandez before the Manila court of first instance.

In that conference, Barrera was instructed to study the case further and submit his recommendations on what action the President would take on the case.

The President asked Barrera to study the legal aspects of the Hernandez case which is said to be the first of its kind to be filed with the Philippine courts.

January 29.—PRESIDENT Garcia conferred with Justice Secretary Jesus Barrera about noon today regarding the case filed against Finance Secretary Jaime Hernandez with the Manila Court of First Instance by City Fiscal Hermogenes Concepcion, Jr.

After the conference, President Garcia said he consulted with Secretary Barrera on certain aspects of the case and that he had called for more facts in order to be in a position to determine the proper course of action he would take.

Earlier, the Chief Executive received governors and congressmen from the Bicol provinces. Through Gov. Juan Triviño of Camarines Sur, who acted as their spokesman, they expressed the faith and confidence of their group and of the people they represented in the integrity of Secretary Hernandez.

Gov. Triviño said they did not wish to exert pressure on anybody but only wanted that the ordinary procedures in the administration of justice be respected, such as the customary raffle in the assignment of cases to judges.

The President was informed that they had no question regarding the choice of Judge Arsenio Solidum to try the case nor of Fiscal Concepcion who will handle the prosecution.

They said, however, that there seemed to have been some undue haste in the filing of the case inasmuch as ordinarily it took a week or two of preliminary investigations before a case reached the court.

Composing the Bicol group that called on President Garcia at Malacañang this morning were Gov. Triviño; Reps. Agaton Ursua and Felix A. Fuentebella of Camarines Sur, Pedro Venida of Camarines Norte, Emilio Espinosa of Masbate, Vicente Peralta and Salvador Encinas of Sorsogon; Sens. Pedro A. Sabido and Pacita M. Gonzalez; Reparations Commissioner Juan Alberto; and Gov. Juan G. Frivaldo of Sorsogon.

Several other provincial delegations from Sulu and Davao also went to Malacañang to present resolutions requesting financial assistance for the construction or reconstruction of public works projects in their respective provinces.

The Davao delegation was accompanied by General Services Secretary Alejandro Almendras, Rep. Gavino Sepulveda, and Gov. Vicente Duterte. Among the members were Davao City Councilor Elias Lopez and Mayors Nonito Llanas, Felix Bandanas, Oswaldo Barol, and Nestorio Cumabig.

Aside from submitting requests for financial aid, the Davaweños also briefed the President on the political situation in the province and the city.

The delegation from Sulu was led by Sen. Domocao Alonto and Rep. Salipada Pendatun of Cotabato and was composed of Abraham Rasul, Alawi Abubakar, Singh Abubakar, Hadji Nur, Miguel Ycaza, F. Sindayen, and H. Jayari.

Rep. Pendatun, who acted as spokesman, conveyed the gratitude of the people of Sulu for the temporary lifting of the ban on the special trade between Sulu and Borneo.

The ban was recently imposed following discovery that some Muslim traders and *Kumpit* owners had abused their privilege by acting as dummies of aliens and that their activities had caused the government a loss of thousands of pesos in revenues.

President Garcia was informed that the ban had caused hardships to majority of the people in Sulu, most of whom were dependent on the special trade for their livelihood.

Pendatun explained that because of the unstable peace and order situation in this southernmost province, many had abandoned their farms to engage in bartering locally produced copra for other goods available in Borneo.

He praised the government for taking the necessary steps to apprehend and recommend the prosecution to the fullest extent of the law of those unscrupulous traders who are dummies of alien businessmen.

The President also received from Abraham Rasul, representing the Mindanao Jaycees, a resolution passed during the third conference of different Mindanao chapters of the organization endorsing the Chief Executive's decision to lift temporarily the suspension of the special trade between Sulu and Borneo.

President Garcia told them he would direct that the Muslim traders be reperesented in the special committee organized to screen participants in the special trade in the Sulu ports of Jolo and Bongao to weed out undesirables.

He said he would study further the feasibility of appointing a Muslim representative to the Presidential Law Enforcement Unit in the Southern Philippines (PLEUSP).

The Chief Executive also received from 12 provincial governors and one city mayor checks totalling ₱25,672,00 representing funds they had raised in response to the government's peace and amelioration fund drive.

Among those who turned in their contributions were Cotabato Gov. Datu Udtog Matalan (represented by Rep. Pendatun), Govs. Josue Cadiao of

Antique, Amado Q. Aleta of Nueva Ecija, Tomas S. Martin of Bulacan, Conrado Estrella of Pangasinan, Bienvenido A. Ebarle of Zamboanga del Sur, Marcos Resiña of Bukidnon, Feliciano Leviste of Batangas, Bernardino O. Almeda of Surigao, Esteban Bernido of Bohol, Francisco Infantado of Mindoro Oriental, Miguel Manguera of Marinduque, and Serafin Teves of Negros Oriental, and Mayor Cipriano B. Colago of San Pablo City.

Officials of the Peace and Amelioration Fund Commission who attended the turn-over ceremonies were Manuel Elizalde, PAFC chairman; Col. Basilio Hernandez, executive officer; Oscar Mabilog, liaison officer; and Rodrigo Feria, PRO.

IN THE AFTERNOON, the President was the guest speaker at a convocation in the Far Eastern University marking the start of celebrations commemorating the school's Silver Jubilee.

Nicanor Reyes, Jr., FEU vice-president, who delivered the opening remarks at the convocation, placed the resources of the university at the disposal of President Garcia in seeking solution of the country's "interminable problems."

LATER in the evening, the President honored Mons. Egidio Vagnozzi, outgoing papal nuncio to the Philippines, at a despedida state dinner in Malacañang.

During the affair, the President conferred the decoration "Lakan" of the Order of Sikatuna on the apostolic nuncio for "extraordinary services rendered in cementing the existing ties of friendship between the Holy See and the Republic of the Philippines and for his outstanding work in the development of a more cohesive and positive Catholic citizenry in the Philippines."

January 30.—SOME 200 students from the U.P. College of Agriculture in Los Baños, Laguna, marched today to Malacañang to request the retention of Agriculture Secretary Juan de G. Rodriguez in the Cabinet.

Lt. Melchor Fronda, who had been sent by the President to meet the students, said President Garcia was busy preparing his budget and his message to Congress.

Fronda said he will transmit their sentiments to the President.

The delegation was headed by Prof. Andres Aglibot and Gudy Calleja and Cecilio Anda, president and vice-president, respectively, of the student body.

After the press conference, the President received Samar officials headed by Sen. Decoroso Rosales. With the group were Gov. Fernando Velos, Eladio Balite, and Felipe Abrigo. Rep. Marcelino Veloso of Leyte was also with the delegation.

President Garcia then received a delegation of officials from Negros Oriental. The group was composed of Gov. Serafin Teves and Reps. Lorenzo Teves and Lamberto Macias.

President Garcia this afternoon said that the existing Philippine-American relations have been shaken by "irritants" and singled out the *Time* magazine as having "done more to damage" the ties binding the two countries.

At his regular press conference, the President said that Philippine-American relations have not yet deteriorated but stressed he was seeking to "smoke out" the irritants" which had plagued the affinity of the two countries.

The President also unburdened himself against the weekly US news magazine which had twice riled him and his administration.

"Bell is *'persona non grata'* to many Filipinos," the President said. However, he underscored his policy of giving foreign newsmen free entry into the country.

In answer to questions fired by newsmen, the President said that *Time* would do well if "it would change its correspondent in the Philippines."

Asked if he would favor the grant of a visa to Bell, the President waved aside the question saying the issue is before Consul General Eduardo Rosal in Hongkong.

Rosal had denied Bell entry visa to the Philippines and the newsman appealed to higher government authorities.

He would not comment on a scheduled anti-Bell rally this evening at Plaza Miranda.

At the press conference, the President:

1. Said that Philippine foreign policy with regard to the United States remains unchanged although the country has shifted its program towards more Asian consciousness;

2. Reiterated his stand against accepting economic assistance from Communist countries;

3. Stated that he will wait for the resolution of the Manila court of first instance on the motion quashing the suit against Finance Secretary Jaime Hernandez before acting on the Hernandez case;

4. Indicated he would present a balanced budget to Congress before the deadline next February 9; and

5. Clarified his stand on the repeal of the barter trade law.

Asked if he ran as a pro-American candidate in the last elections, the President said he launched his candidacy under the Nacionalista Party and won mainly on the basis of his stand on purely domestic issues.

He debunked the U.S. magazine article's insinuation that a pro-American candidate would easily win an election in the Philippines, and observed that Filipino electors vote mainly on the basis of domestic issues.

He said it is not incompatible for the Philippines to maintain present relations with the United States and at the same time promote closer relations with Asian countries.

Moreover, the President said, he has not yet gone over the report of Secretary of Justice Jesus G. Barrera on his inquiry into the so-called "White Paper." He said he did not have time to go over the Barrera report.

The President said he will wait until the Manila court has resolved the Cabinet member's motion to quash his case before he would take action on the Secretary of Finance.

As for the new national budget, he explained it would consist of two categories which he listed as "A" and "B".

He said that the "A" budget would contain merely the operational expenditures of the government to be supported by present revenue measures.

The "B" budget will be outlays for economic and social services.

On his alleged interference in legislative matters regarding the repeal of Republic Act No. 1410, otherwise known as the barter trade law, the President said that his view had been asked by the Senate-House conference committee.

He denied he had sought to salvage some barter applications being processed by the no-dollar import office of the Department of Commerce.

He said that while he was in favor of scrapping the barter law, he reminded the solons that legislative action towards the abrogation of the law would not affect adversely "perfected contracts."

He did not want to expose the government, he added, to several damage suits which may arise from the impairment of already-established contracts.

January 31.—PRESIDENT Garcia this afternoon delivered the keynote address at the opening ceremonies of the seminar on socio-economic development of Mindanao, Sulu, and Palawan.

The three-day seminar is sponsored jointly by the Mindanao, Sulu, and Palawan Association and the Xavier University.

Leaving early this morning by plane, the President stopped by Ozamis City to inspect the damage caused by the recent fire which razed eleven blocks in the slum and business sections of Ozamis.

The Chief Executive expressed satisfaction in the prompt distribution of relief supplies to fire victims at an impromptu rally held in the middle of the burned area. He also presented a check for ₱50,000 to City Mayor Angel

Medina in payment of cash advance used in the purchase of badly needed construction materials for homeless residents.

Considered the worst fire to hit Mindanao, it rendered 824 families homeless, caused damage amounting to hundreds of thousands of pesos, and resulted in loss of one life.

Accompanying the President in his walk through the burned area were Mayor Medina, Vice-Mayor Rafael Gurbuxani, Gov. Diego Ty Deling, Reps. Alberto Ubay of Zamboanga del Norte and Canuto Enerio of Zamboanga del Sur, Salipada Pendatun of Cotabato, and Reynaldo Honrado of Surigao, Sen. Domocao Alonto, Brig. Gen. Ramon Aguirre, 4th MA commanding general, NEC Chairman Jose C. Locsin, General Services Secretary Alejandro Almendras, Social Welfare Administrator Amparo Villamor, DANR Under-Secretary Amando Dalisay, Highways Commissioner Nicolas Cuenca, and Assistant Executive Secretary Sofronio C. Quimson.

After lunch at the residence of Vice-Mayor Gurbuxani of Ozamis City, President Garcia and party took off for Cagayan de Oro City arriving there about 3:30 p.m.

The President was met at the airport by city officials headed by Mayor Justiniano Borja and provincial officials led by Gov. Vicente de Lara.

After acknowledging military honors accorded him by an honor guard, the President led the motorcade to Xavier University where the seminar was held.

Chairman of the seminar is Sen. Emmanuel Pelaez, president of MINSUPALA Association.

After the seminar, President Garcia held a conference and open forum with national, provincial, city, and municipal officials at the City Hall conference room.

The President and members of the party were honored at the presidential banquet given by the City government at Casino Social Hall.

After the banquet President Garcia motored to Del Monte where he spent the night.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 329

WAIVING THE ADDITIONAL PROGRESSIVE TAXES TO BE COLLECTED FROM, AND PAID BY, PROPRIETORS AND OPERATORS OF CERTAIN SUGAR MILLS FOR THE CROP YEAR 1957–1958

WHEREAS, most of the sugar centrals in the Philippines are still undertaking the rehabilitation of their facilities, including the buildings and dwelling houses of their laborers, which were damaged during the last war, and are incurring heavy expenditures for this purpose;

WHEREAS, some of those centrals have been operating at a loss, and others at profits which are inconsiderable; and

WHEREAS, the imposition of the additional progressive taxes on these centrals would be unduly oppressive and, in a few instances, even confiscatory in effect;

Now, THEREFORE, I, Carlos P. Garcia, President of the Philippines, do hereby waive the additional progressive taxes to be paid by the proprietors and operators of the following sugar mills for the 1957–1958 crop under section 2 of Commonwealth Act No. 567:

1. Ormoc Sugar Company, Inc., provided that the central shall continue to give its planters transportation allowances as provided for in the revised milling contract between the central and its planters;

2. Bogo–Modollin Milling Co., Inc., provided that improvements being undertaken to increase the capacity of the mill and factory shall be continued and that the increase in the planters' participation 1 + ½% given since 1952–1953, thus making the planters' participation 57+ ½%, in addition to the escalator clause giving the planters 60% of all sugar and molasses manufactured from and including the 131st milling day, shall continue to be enforced;

3. Asturias Sugar Central, Inc., provided that the participation shall continue to be increased to 57+½%.

4. Central Azucarera del Norte;

5. Nind Sugar Company, provided that 55% of the equivalent of the progressive tax shall be paid to the central planters as additional benefits.

Done in the City of Manila, this 17th day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 286

AUTHORIZING THE IMPERIAL INSURANCE, INC., TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS, AND UNDERTAKINGS

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body, whether executive, legislative, or judicial, shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking unless such corporation has been authorized to do business in the Philippines in accordance with the provisions of said Act No. 536, as amended, nor unless such corporation has, by contract with the Government of the Philippines, been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, the Imperial Insurance, Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby authorize the Imperial Insurance, Inc., to be-

come a surety upon official recognizances, stipulations, bonds, and undertakings in such manner and under such conditions as are provided by law, subject to the condition that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 16th day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 287

CREATING A COMMITTEE TO INVESTIGATE THE ADMINISTRATIVE CHARGES AGAINST DIRECTOR OF PRISONS ALFREDO M. BUNYE AND ASSISTANT DIRECTOR ERIBERTO MISA AND TO RECOMMEND MEASURES TO IMPROVE PRISON ADMINISTRATION

A committee is hereby created to investigate the administrative charges against Director of Prisons Alfredo M. Bunye and Assistant Director Eriberto Misa and to study and recommend measures to improve prison administration. The committee shall be composed of the following:

Hon. Alfonso Felix	Chairman
Hon. Pompeyo Diaz	Member
Hon. Edilberto Barot	Member

The committee is granted all the powers of an investigating committee under Sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. It is authorized to call upon any department, bureau, office, agency, or instrumentality of the Government for such information as it may require in the performance of its work and, for the purpose of securing such information, it shall have access to and the right to examine any books, documents, papers, or records thereof.

The committee shall submit its report and recommendations to the President of the Philippines as soon as possible.

Done in the City of Manila, this 22nd day of January, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 6

January 8, 1959

DESIGNATING TEMPORARILY SPECIAL ATTORNEY GODOFREDO ESCALONA OF THE DEPARTMENT OF JUSTICE TO ASSIST ALL PROVINCIAL FISCALS AND CITY ATTORNEYS IN MINDANAO AND THE PROVINCIAL FISCALS OF SULU AND PALAWAN.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Godofredo Escalona, Special Attorney in the Department of Justice, is hereby temporarily designated to assist all the Provincial Fiscals and City Attorneys in Mindanao, and the Provincial Fiscals of Sulu and Palawan, in the investigation and prosecution of all criminal cases filed by the President's Law Enforcement Unit for Southern Philippines (PLEUSP) created under Executive Order No. 293, dated April 10, 1958, effective immediately and to continue until the return of Special Attorney Perfecto B. Querubin thereat.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 7

January 14, 1959

AUTHORIZING DISTRICT JUDGE VICENTE ARGUELLES OF QUEZON TO HOLD COURT IN INFANTA, QUEZON, ON FEBRUARY, 1959, DEFERRING THE COURT SESSIONS FOR NOVEMBER, 1958.

In the interest of the administrative of justice and pursuant to the provisions of Section 54 of Republic Act 296, as amended, the court sessions at Infanta, Quezon, for November, 1958, is hereby postponed and the Honorable Vicente Arguelles, District Judge of Quezon Province, 1st Branch, is hereby authorized to hold court thereat, in February 1959, for the purpose of trying all kinds of cases and to enter judgments therein.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 8

January 14, 1959

DESIGNATING SPECIAL ATTORNEY PEDRO D. CENZON OF THE DEPARTMENT OF JUSTICE TO ASSIST CITY FISCAL OF MANILA.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Pedro D. Cenzon, Special Attorney in the Department of Justice, is hereby designated to assist the City Fiscal of Manila in the investigation and prosecution of the complaint for Robbery (Extortion) filed by Lt. Cmdr. Marcelino Calinawan of the Presidential Fact Finding Committee (Bureau of Customs) against Lt. Jesus Buenaventura, MPD, et al, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF PLANT INDUSTRY

ADMINISTRATIVE ORDER No. 2
Series of 1954 (Revised)

November 24, 1958

REGULATIONS GOVERNING THE IMPORTATION AND EXPORTATION OF PLANT MATERIALS INTO AND FROM THE PHILIPPINES.

Under authority conferred by sections 1, 2, and 11 of Act No. 3027, entitled "An Act to Protect the Agricultural Industries of the Philippine Islands

from Injurious Plant Pests and Diseases Existing in Foreign Countries, etc.," which authority is now vested in the Director of Plant Industry and the Secretary of Agriculture and Natural Resources by virtue of Act No. 3639, Administrative Order No. 2, Series of 1951, containing regulations governing the importation, bringing or introduction of plant materials into and exportation of the same from the Philippines, is hereby revised and promulgated for the information and guidance of all concerned.

1. *Definitions.*—The following terms when used in this Administrative Order shall mean as follows:

(*a*) "Person", any natural or juridical person such as corporations, partnerships, societies, associations, firms, companies and other legal entities.

(*b*) "Plant materials," any living plants, rhizomes, fruits, seeds, cuttings, bulbs and corms, grafts, leaves, roots, scions and fruit pits, and such other parts of plants as are capable of propagation, or of harboring plant pests and diseases.

(*c*) "Plant Quarantine Officer", any person so designated by the Director of Plant Industry to act as the latter's representative and having a written appointment issued by the Director of Plant Industry.

(*d*) "Country", any independent political units or sovereign nations, territories, colonies, and political or territorial subdivisions.

(*e*) "Disinfection", any scientific treatment applied for the purpose of destroying any infection or infestation that may occur on, in or amongst plant materials.

(*f*) "Special Quarantine Order", shall mean those Administrative Orders issued by the Director of Plant Industry prohibiting or restricting the importation of certain plant materials.

2. *Plant Materials for which permit is required.*—Plant materials which are governed by special quarantine orders now in force and those which may hereafter be made subject to such orders, may be imported in limited quantities, under permit from the Director of Plant Industry, from countries which maintain plant quarantine and inspection service, for the purpose of keeping this country supplied wtih new varieties and necessary propagating stock. The same plant materials may also be imported in limited quantities, under quarantine, from countries not maintaining plant quarantine and inspection service, provided they are to be used for experimental purposes only, and under such conditions as the Director of Plant Industry may impose. The importation of all plant materials falling under this section shall be made only through the Port of Manila subject to the particular administrative orders governing them and upon filing with the Director of Plant Industry, an application for a permit to import same (B.P.I. Form No. 32).

The Director of Plant Industry, with the approval of the Secretary of Agriculture and Natural Resources, shall issue a supplementary notice, whenever any country not mentioned in the corresponding special quarantine order is found and determined to be infested with any injurious insect or infected with any plant disease to the effect that the importation of plant materials from such country shall, thereafter, be governed by the special quarantine order. He shall likewise issue a supplementary notice, with the approval of the said Department Head, whenever any country is found and determined to be free from injurious insects and plant diseases, to the effect that the plant materials, in general, or those mentioned in the special quarantine order concerned may be imported from such country, subject to the provisions of this Order regarding entry, inspection, certification, treatment, etc.

3. *Application for permit to import plant materials.*—All persons who intend to import plant materials must first file an application with the Director of Plant Industry on B.P.I. Form No. 33. On approval of the Director of Plant Industry such application, a permit shall be issued in quadruplicate (B.P.I. Form No. 34). The original copy shall be given to the applicant for presentation to the plant quarantine officer at the port of entry, the duplicate shall be forwarded to the said plant quarantine officer, the third copy shall be sent to the Collector of Customs, and the fourth copy shall be filed with the application. Before the issuance of the permit, however, the Director of Plant Industry, to insure compliance with conditions imposed herein, require the importer to file a bond in the amount equal to the invoice cost of the plant materials imported, but in no case less than ₱100.

4. *Notice of arrival by the permittee.*—Immediately upon the arrival of plant materials at the port of entry, the permit or the person bringing into the country plant materials should notify the Director of Plant Industry of the arrival of plant materials under permit upon B. P. I. Form No. 35, stating the number of permit, name of ship or vessel date or arrival, the country and locality where grown, name of exporter, name of importer, agent or broker at the port of entry, character and quantity of plant materials.

5. *Notice of shipment by permittee.*—Upon landing the plant materials and before removal from the port of entry of each separate shipment or consignment thereof, the permittee shall notify the Director of Plant Industry on B.P.I. Form No. 36, stating the number of permit, the date of arrival, the name and address of the consignee to whom it is proposed to forword the plant materials, the probable date of shipping and route of transportation. A separate report is required of each ultimate consignee. Plant materials which have once been passed and released by a duly authorized plant quarantine

officer may be moved from place to place without restriction other than those imposed on the interprovincial movement of domestic plant materials, after due notice to the Director of Plant Industry.

6. *Revocation of permits.*—Permits may be revoked and further permits refused for the importation of plant materials from any grower or exporter of any foreign country who has violated Act No. 3027 or any rules and regulations promulgated thereunder; or for the importation of plant materials from any foreign country where inspection is considered by the Bureau of Plant Indsutry, as the result of its examination of importations therefrom, to be merely perfunctory, or because of the failure of the permittee to give the notice required by this Order, or because a false or incomplete notice has been given, or a shipment has been intentionally mislabelled or any other rules or regulations duly issued have not been complied with.

7. *Foreign certificate of inspection.*—Importations of fruits, vegetables, seeds and other plant materials from foreign countries must be accompanied by certificates of inspection issued by the proper government authority of the country of origin, stating that the materials are free from injurious insects and plant diseases. Where the government maintains plant quarantine service, the certificates of inspection required in this Order shall be that of inspection of plant materials issued by the chief, or director of the plant quarantine service or his duly authorized representatives, as the case may be, of the country or place of origin. In countries the government of which do not maintain plant quarantine service, the certificates of inspection of plant materials required in this Order must be accomplished by the exporter or shipper concerned duly subscribed and sworn to by him before a person legally authorized to administer oaths in the country of origin containing among other things, a statement to the effect that the plant materials did not originate from a place where injurious insects or plant diseases were prevalent, that they have not been kept or stored in places infested by injurious insect or infected by plant diseases, and that whatever treatment, fumigation, disinfection, etc., as required by the Director of Plant Industry prior to shipment has been done. Persons who import plant materials accompanied by certificate that they are free from injurious insects and diseases issued by the inspector of the country of origin or executed by the exporter or shipper in accordance with the provisions of this section, shall be required to present the certificate to the office of the plant quarantine officer. Presentation of such certificate, however, shall not preclude inspection by the plant quarantine officials of this country if deemed necessary. A fee of ten pesos shall be charged for failure of the importer or agent concerned to present the required certificate at the time of inspection of the imported plants or plant materials, but such payment shall not mean that the presentation of the certificate when received has been waived. He must file an affidavit stating that he should surrender the required certificate within 30 days from receipt of his shipment and failure to comply with same would be penalized under section 19 of this Administrative Order.

Incoming shipments of plants and plant materials with a permit previously secured from the Director of Plant Industry, shall not be removed from the place of landing or customs zone, without the required fees for their inspection, certification, fumigation, disinfection or entrance, as the case may be, having been first paid by the importer, consignee or other interested party. Shipments arriving without permit from the Director of Plant Industry shall either be confiscated or returned to the port of origin or reshipped elsewhere at the expense of the importer, consignee or interested party: *Provided, however*, that when the plant materials such as fruits, vegetables, seeds, or other parts of plants covered by such shipments are not imported from countries some of the plant materials of which are prohibited entry into the Philippines and are not intended for propagation purposes and those facts are sworn to by said importer, consignee or interested party, the Director of Plant Industry may waive the afore-mentioned requirement and allow entry, subject to the conditions herein set forth.

8. *Inspection and certification.*—All persons who intended to import plant materials must submit to the Bureau of Plant Industry an application for inspection of incoming plants, upon B.P.I. Form No. 37 on or before the arrival of such shipment. All such plant materials shall be inspected upon arrival for any injurious insects and plant diseases. All plants which are found to be free from such insects and diseases shall be so certified and tagged with B.P.I. Form No. 38 or stamped and allowed to enter. Plant materials found to be infested by injurious insects or infected with diseases shall be returned to the port of origin or destroyed, at the option of the importer. In either case the cost shall be borne by the importer.

9. *Disinfection or fumigation.*—Plant materials imported under section 2 hereof shall, at the expense and responsibility of the importer, be subject, as a condition of entry, to such disinfection or fumigation as may be required by the Plant Quarantine Officer, and may be planted in isolated places designated by the Director of Plant Industry until evidence is available showing that no injurious insects or plant diseases are present.

10. *Freedom of plant materials from sand, soil or earth.*—All plant materials desired to be imported must be free from sand, soil or earth, and all plant roots, rhizomes, tubers, etc., must be washed to thoroughly free them from such sand, soil or earth, and must be so certified by the duly

authorized officer of the country of origin or by the exporter or shipper in accordance with the provisions of section 8 hereof: *Provided,* That sand, soil or earth, may be employed for the packing of bulbs and corms when they have been sterilized or rendered safe in accordance with the methods prescribed by the Bureau of Plant Industry and this fact is so certified by the duly authorized inspector of the country of origin or by the exporter or shipper in accordance with the provisions of said section.

11. *Approval of packing materials.*—All packing materials employed in the importation of nursery stock and other plants and seeds shall be passed upon and approved by the Bureau of Plant Industry as to their safety for such use. Such packing materials must not previously have been used for packing in connection with living plants, and, except for bulbs and corms must be free from sand. soil or earth and must be certified as meeting these conditions by the duly authorized inspector of the country of origin or by the exporter or shipper in accordance with the provisions of section 8 hereof.

12. *Plant materials held under quarantine.*—Any case, box, package, or other container of plant materials under quarantine shall be so marked by attaching to it a quarantine sign, B.P.I. Form No. 39, clearly indicating to the employees of common carriers as well as the public that the container in question is being held subject to quarantine rules and regulations promulgated by the Director of Plant Industry. The transfer of or tampering with any case, box, package or other materials containing plant materials under quarantine, is prohibited until such plant materials contained in the case, box, package or other container have been released by such an officer.

13. *Plant materials for which permit is not required.*—Fruits, vegetables, cereals and other plant products designed for food purposes, or properly dried, sterilized, or poisoned botanical specimens when free from sand, soil or earth, seeds of vegetables and flowering plants for planting not exceeding half of a pound either imported personally or sent as gifts from abroad, bouquets, and when not governed by special quarantine orders, may be imported, but subject to the conditions specified in section 8.

14. *Ports of entry.*—Imported plant materials except those covered with special quarantine orders shall only be admitted entry through the ports of Manila, Cebu, Iloilo, Zamboanga, Legaspi, Davao, Jolo, Aparri, Jose Panganiban, Tacloban, San Fernando, La Union, Cagayan de Oro, Sual, Pangasinan, Hondagua, Dumaguete, Hinigaran, Pulupandan, Batangas, and no others.

15. *Incoming plant materials by mail.*—Imported plant materials through the post office shall be inspected by the plant quarantine officials upon notification of the presence of such materials at the post office. These plant materials shall be treated like those coming through the customs house. Inspection shall be made in the presence of either the consignee, a Post Office official or both.

16. *Fees.*—The fees for the fumigation or disinfection of all imported seeds, plants, plant materials or parts thereof, or of soil or any materials whatsoever used for packing or covering same which is determined or suspected to be infested with injurious insects or infected with plant diseases, the fees for the inspection and certification of plant materials, for exportation or for domestic movement and for each permit issued to a private party to import plants and plant materials, shall be as follows:

Fumigation fees.—For every cubic meter or less of gas used or space occupied by the material being treated in the fumigation chamber, including labor	₱1.00
Disinfection fees.—For every liter or less of disinfectant used, including labor....	₱1.50
Fees for issuance of permit.—For every permit issued to import plants or plant materials	₱5.00

The same fees shall also be charged for local seeds, plants or plant materials, or of soil or any materials whatsoever used for packing or covering same which are submitted for fumigation, disinfection, or other treatment as the case may be.

Inspection and certification fees.—For every certificate issued for the inspection of plant materials such as fruits, seeds, nuts, grains, and similar other materials for export or import, fees shall be charged as follows:

Fifteen centavos (₱0.15) per parcel irrespective of the size or a minimum charge of one peso and fifty centavos (₱1.50).

In case of living plants, particularly orchids, a minimum charge of ₱2.00 for a shipment of 10 plants or less shall be charged. For a shipment of living plants in excess of 10 plants a minimum charge of ₱0.20 for each additional plant shall be collected. The above does not include charges cleaning and treatment when these are necessary. The amount shall be based on the cost of labor and materials consumed therefore furnished by the Bureau.

Fees for the inspection of copra meal.—For the inspection and certification of copra meal and related products, a fee of two centavos (₱0.02) per sack of 100 lbs. or 45 kilos shall be charged. The regular fee for fumigation shall be charged, if said treatment is deemed necessary.

Fees for overtime services.—Services of plant quarantine officers, laborers and helpers performed outside of the regular office hours shall be paid by the party or parties served at the rate of ₱1.50 and ₱1.20 per hour, for plant quarantine inspectors and laborers or helpers, respectively. They shall also be provided with the necessary transportation

expenses and actual meal or meal allowance at the rate of ₱3.50, whenever such overtime work coincides with meal time.

Inspection of plants for internal or domestic shipment.—Living plants, particularly abaca and bananas transported from quarantined areas within the country, shall be inspected free of charge but the interested parties shall first secure the necessary permit from the Director of Plant Industry, Manila, or from his duly authorized representative in the infected province concerned before any shipment is made.

17. *Application for inspection of plant materials for exportation.*—All persons who intend to export plant materials must submit to the Director of Plant Industry an application for inspection of plant materials they desire to export, upon B.P.I. Form No. 40, within a reasonable time before the shipment so as to allow proper inspection and certification.

18. *Certification of plant materials for exportation.*—If the plant materials upon inspection are found to be free from plant diseases and injurious insects, a certificate (B.P.I. Form No. 41) shall be issued by the plant quarantine officer to the exporter to accompany the shipment or the correspondence regarding the shipment, as the case may be. A copy of such certificate shall be filed in the plant quarantine office. A tag (B.P.I. Form No. 42) issued by the said office to the exporter should be attached to the shipment. Plant materials showing the presence of injurious insects or plant diseases shall be returned to the exporter without certification. Under no condition shall certificates of freedom from diseases and injurious insects be given for plant materials which have been taken from, or mixed with other plants which are badly diseased or infested. Certificates of inspection of plant materials for exportation shall be given only after careful investigation of the history of such plant materials. Certification shall not be made for any plant material intended for shipment to a country in which their entrance is absolutely prohibited.

19. *Penal provisions.*—(*a*) Any person who violates or contravenes any of the provisions of this Administrative Order, or who forges, counterfeits, alters, defaces, or destroys any certificate or any paper issued by virtue of this Order shall be liable to prosecution, and upon conviction shall suffer the penalty provided in section 13 of Act No. 3027, which is a fine not exceeding one thousand pesos (₱1,000) or imprisonment of not exceeding six months, or both, in the discretion of the court, and such other penalties as are prescribed in the Revised Penal Code. (*b*) Any violation of the provisions hereof will be a legal basis for the confiscation of the importers' bond required in section 3 of this Order.

20. *Repealing provisions.*—All previous orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Order, are hereby revoked.

21. *Effective date.*—This order shall take effect on the date of approval by the Secretary of Agriculture and Natural Resources.

Approved: December 23, 1958.

JUAN DE G. RODRIGUEZ
Secretary of Agriculture and Natural Resources

Recommended by:

EUGENIO E. CRUZ
Director of Plant Industry

CENTRAL BANK OF THE PHILIPPINES

LIST OF THE LEGAL PARITIES AND/OR EXCHANGE RATES, AS OF DECEMBER, 1958, OF THE VARIOUS FOREIGN CURRENCIES IN TERMS OF THE U.S. DOLLAR AND THE PHILIPPINE PESO.

Member countries (Currencies with par values)	Unit	Equivalent in U. S. currency	Equivalent in Phil. currency
Argentina	Peso	$0.05556	₱0.11112
Australia	Pound	2.24000	4.48000
Austria	Schilling	.03846	.07692
Belgium	Franc	.02000	.04000
Brazil	Cruzeiro	.05406	.10810
Burma	Kyat	.21000	.42000
Ceylon	Rupee	.21000	.42000
Chile	Peso	.00909	.01818
Colombia	Peso	.51283	1.02566
Costa Rica	Colon	.17809	.35613
Cuba	Peso	1.00000	2.00000
Denmark	Krone	.14478	.28966
Dominican Republic	Peso	1.00000	2.00000
Ecuador	Sucre	.06667	.13334
Egypt	Pound	2.87156	5.74312
El Salvador	Colon	.40000	.80000
Ethiopia	Dollar	.40250	.80500
Finland	Markka	.00313	.00626
Germany, Fed. Rep. of	Deutsche Mark	.23810	.47620
Ghana	Pound	2.80000	6.60000
Guatemala	Quetzal	1.00000	2.00000
Haiti	Gourde	.20000	.40000
Honduras	Lempira	.60000	1.00000
Iceland	Krona	.06140	.12280
India	Rupee	.21000	.42000
Iran	Rial	.01320	.02640
Iraq	Dinar	2.80000	6.60000
Ireland	Pound	2.80000	5.60000
Israel	Pound	.55556	1.11112
Japan	Yen	.00278	.00556
Jordan	Dinar	2.80000	6.60000
Lebanon	Pound	.46631	.91262
Luxembourg	Franc	.02000	.04000
Mexico	Peso	.08000	.16000
Netherlands	Guilder	.26316	.52632
Nicaragua	Cordova	.14286	.28572
Norway	Krone	.14000	.28000
Pakistan	Rupee	.21000	.42000
Panama	Balboa	1.00000	2.00000
Paraguay	Guarani	.01667	.03334
Philippines	Peso	.60000	1.00000
Sudan	Pound	2.87166	6.74312
Sweden	Krona	.19330	.38660
Syria	Pound	.46631	.91262
Turkey	Lira	.35714	.71428
Union of South Africa	Pound	2.80000	6.60000
United Kingdom	Pound	2.80000	6.60000
United States	Dollar	1.00000	2.00000
Venezuela	Bolivar	.29851	.59702
Yugoslavia	Dinar	.00333	.00666

SOURCE OF DATA: International Financial Statistics, December, 1958.

Member countries (Currencies without par values)	Unit	Equivalent in U. S. currency	Equivalent in Phil. currency
Afghanistan	Afghani	—	—
Bolivia	Bolivianos		
Selling rate		$0.00009	₱0.00018
Canada	Dollar	1.03199	2.06398
China	Yuan		
Principal Selling Rates		.04036 .02749	.08072 .06498
Principal Buying Rate		.04068	.08136
Other Export Rate		.02772	.05544
France	Franc	.00238	.00476
Greece	Drachma	.0333	.0666
Indonesia	Rupiah		
Principal Export Rate		.03300	.06600
Principal Import Rates		.02639 .01761	.05278 .03522
Other Import Rates		.01319 .00960	.02638 .01920
Italy	Lira	.00160	.00320
Korea	Hwan	.00200	.00400
Malaya	Dollar	.32787	.65674
Morocco	Franc	—	—
Peru	Sol		
Principal Rate		.04010	.08020
Others		.03996	.07990
Saudi Arabia	Riyal	—	—
Spain	Peseta		
Principal Export Rate		.02381	.04762
Other Export Rates		.03226 .02000	.06452 .04000
Principal Import Rate		.02366	.04732
Thailand	Baht		
Selling Rate		.04739	.09478
Buying Rate		.04782	.09564
Tunisia	Franc	—	—
Uruguay	Peso		
Principal Export Rate		.28901	.57802
Other Export Rates		.36587 .24390	.71174 .48780
Principal Import Rate		.47619	.95238
Other Import Rates		.24331 .16367	.48662 .32734
Free Rate		.10363	.20726
Vietnam	Piastre		
Principal Rate		.02857	.06714
Invisibles Rate		.01361	.02722

Non-Member countries (Currencies without par values)	Unit	Equivalent in U. S. currency	Equivalent in Phil. currency
New Zealand	Pound		
Selling Rate		$2.7702	₱5.6404
Buying Rate		2.8020	5.6040
Portugal	Escudo	.03478	.06966
Switzerland	Franc	.23278	.46666
Non-Metropolitan Areas			
Hongkong	Dollar	.17500	.35000
British North Borneo Brunei, Singapore, Sarawak	Dollar	.32667	.65384

SOURCE OF DATA: International Financial Statistics, December, 1958.

G. L. RIALP
Director

APPOINTMENTS AND DESIGNATIONS

Ad Interim Appointments

January 1959

Genaro Sarmiento and Agustin Caseñas as Members of the Board of Directors of National Development Company, January 16.

Antonio J. Zarte as Chairman of the Board of Examiners for Civil Engineers, January 20.

Elpidio C. Vera as Assistant Director of Bureau of Mines, January 19.

Roberto Madrid as Assistant Provincial Fiscal of Iloilo, January 21.

Fidencio S. Raz as First Assistant Provincial Fiscal of Capiz, January 21.

Vicente Abalajon as Second Assistant Provincial Fiscal of Capiz, January 21.

Luis Lagdameo as Chairman and Ciceron Guerrero, Regino Aro, Demetrio C. Castillo, and Diosdado Amado as Members of the Board of Assessment Appeals of Quezon, January 21.

HISTORICAL PAPERS AND DOCUMENTS

SPEECH OF PRESIDENT GARCIA BEFORE THE FIRST ASSEMBLY OF PHILIPPINE NATIONAL COOPERATIVE BANK AT THE YMCA YOUTH CENTER, CONCEPCION STREET, AT 10:00 a.m., JANUARY 16, 1959

DELEGATES TO THE CONVENTION,
DISTINGUISHED GUESTS,
LADIES AND GENTLEMEN:

I AM glad to have been invited to address this convention which, I understand, has for its principal aim the consideration of necessary steps towards the establishment of a Philippine National Cooperative Bank, as contemplated and authorized by Republic Act No. 2023. Perhaps I should add that, for a program of the magnitude envisage in the legislation which inspired this meeting, taking into account the present state of our finances in relation to the essential needs and demanding requirements of our people, it takes the maximum of your courage, vision, and dedication to bring this to a happy reality.

I need not be convinced that the purpose for which Republic Act No. 2023 was enacted, which is to strengthen the cooperative movement in the financial field, is of the considerable importance. I am keenly aware of the need of promoting cooperative organization and financing of the economic enterprises of the smallest units of our society, many of which are languishing, so as to ameliorate conditions in our rural areas and to build up even our far flung communities as vital factors in strengthening the national economy. It is hardly necessary for me to remind you that the story of most of our cooperatives in the country is not of success. We have yet to achieve more of that spirit of collectivism and perhaps a little less of individualism.

This should not deter you, however, from proceeding in accordance with your agenda, which is to consider the needed steps that would lead to the eventual organization of such a bank, exclusively devoted to financing non-agricultural cooperative activities. After we have gone rather deeply into an agricultural cooperative program, investing heavily in farmers' cooperatives throughout the islands, I agree that it is high time that we should begin balancing our efforts in this particular sector of our economic structure with similar efforts in the non-agricultural sector, which is just as important, if not indeed even more important, because it embraces the large masses of our population that remain unorganized either in their common interest as consumers or as potential contributors to industrial productivity.

You have a tremendous responsibility in your hands, for the gospel of cooperation, whether in social and civic betterment or in the industrial and business field, has yet to be sold more effectively to our public. You have yet to win active and widespread support for it, especially in the open areas, outside of the sphere of established industries, where unorganized multitudes, helplessly exposed to the fierce play of unbridled economic forces, need them most. It has yet to be felt by our populace as an absolute necessity in the advancement of their common welfare, for until our masses are made deeply conscious of its value as a pattern of conduct and a way of life, government help will not be of much avail.

You are, therefore, called upon to go into this tremendous pioneering work with greater zeal, to educate, inspire, and organize our people in their own self-interest and for their mutual protection towards husbanding their resources, in however limited amounts, for the greater service of the nation. The government will not fail you. It will come to your aid in every form it may be needed to strengthen your hands and to render permanent the benefits of your accomplishments. I assume the Development Bank of the Philippines will be ready to lend you a helping hand through its evolving program of financing small industries.

Perhaps, it is still your primary task at this time to keep on organizing cooperatives more extensively than so far undertaken, never failing to invigorate their growth. If because of meager facilities placed at your command, you have not gone far enough field, I should be glad to recommend or take such measures as will enable you to cover more territory and to bring more numerous groups into the cooperative movement. With your experience and example, you are in possession of all the useful information and vital data pointing to the indisputable benefits that accrue to members of cooperatives. You know how much better off those individuals and communities operating as or through cooperatives are today, compared with those acting singly or without the advantage that mutual protection and help can give.

You are all familiar with the case of the Fabrica Consumers Cooperative in Occidental Negros with average annual sales of over ₱1,500,000; that of the Victorias Milling Credit Union, also of Negros, with more than ₱285,000 in members' deposits; and that of the Philippine Iron Mines Credit Union, in Camarines Sur, with accumulated deposits of almost ₱300,000. While these are outstanding and exceptional successes, they are, nevertheless, clearly indicative of the magnitude of the resources of small people when pooled. You can well enlist the support of all the con-

sumers' cooperatives and credit unions now in existence to rally our people to this great cause.

This convention should, therefore, be able to adduce more tangible and incontestable evidences that the immediate establishment of a Philippine National Cooperative Bank, as envisioned and provided in Republic Act No. 2023, is fully warranted and that, if the law is implemented now, it will very materially assist in carrying out the basic objectives of the present administration instead of merely burdening our strained finances without any positive assurance of early gains in terms of greater productivity and prosperity for the nation. If you can show that it would be a reliable means of drawing out savings lying idle in private coffers and an incentive to thrift and to profitable cooperative enterprises among people, who would otherwise be inactive or disposed to extravagance and the thoughtless dissipation of wealth; and if through this convention, you will succeed in working out a viable program with which to create an instrument, in a masisve process of capital formation and investment for mustering and putting to good use every centavo that the masses of our people can spare, then, by all means, let us have the proposed Cooperative Bank at once, for it may yet finance our way out of our present difficulties.

I am, of course, encouraged by the information made available to me in your efforts to promote the organization of a Bank that there has been pledged towards the required capital stock as much as ₱264,200 by some 208 consumers cooperatives and credit unions and by several cooperative-minded individuals and that you can count on still greater potential aid coming from all 425 non-agricultural cooperatives now operating in 18 cities and 12 towns in 43 provinces, with a total membership of 43,912 cooperators It is equally encouraging to learn that, considering the comparatively little support so far extended by the government towards non-agricultural cooperative organization, you have already succeeded in pointing the way towards tapping largely unexploited sources of capital that can be channeled for use in our economic development.

In your complex undertaking in this convention, you should consider yourselves extremely fortunate to have the benefit of the mature mind, experience, and practical counsel of such a militant and purposeful leader in the cooperative movement and in business as Secretary Pedro C. Henaez, whose department has supervision of the Cooperatives Administration Office. You are equally fortunate that we already have in the statute books Republic Act No. 2023, which constitutes the government's commitment of full financial assistance, to the extent of a ₱5,000,000 contribution to the proposed Cooperative Bank's capital, of which

₱1,000,000 may be made available when and if the Bank is actually organized.

These and all the assistance that can be given to you by all agencies of the government, especially its policy and technical panels as well as its financing institutions, are distinct assets and advantages already in your favor and there is nothing that should hinder you from pursuing your very laudable aims. Insofar as I am concerned, it should be enough that you realize that my program calls for the maximum alleviation and improvement of the condition of the masses of our people. I see in the cooperative movement and, consequently, in a bank devoted to its support and expansion, the means for promoting wider productivity throughout the land and for spreading abundance among all levels of our population.

I see in them a resurgence of our native skills and their wider employment in the total utilization of our vast raw materials and immense qualities of by-products now largely going to waste, the profitable exploitation of our cottage industries, a re-vitalization of the economy of our rural areas, and a prosperity that will lift our country towards greater stability and our people towards greater security and contentment. That is our common goal and I bid you to reach out for it with all your ingenuity, industry, and vigor.

DECISIONS OF THE SUPREME COURT

[No. L-11485. JULY 11, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* GREGORIO BACSA, defendant and appellant

1. CRIMINAL PROCEDURE; DISCHARGE OF ONE OF SEVERAL DEFENDANTS TO BE STATE WITNESS; ONE OR MORE DEFENDANTS MAY BE DISCHARGED.—Rule 115, Section 9, of the Rules of Court does not prohibit the discharge of more than one co-defendant to be utilized as state witness. It all depends upon the needs of the fiscal and the discretion of the Judge. Any error of the trial judge in this matter cannot have the effect of invalidating the testimony of the discharged co-defendants.
2. ID.; ID.; DEFENDANTS DISQUALIFIED TO BE DISCHARGED.—The rule disqualifying defendants from the benefit of exclusion speaks of *conviction* of an offense.
3. CRIMINAL LAW; ROBBERY WITH HOMICIDE AND RAPE; RAPE AS AN AGGRAVATING CIRCUMSTANCE.—Where rape attends the commission of the offense of robbery with homicide, the rape should be deemed to aggravate the robbery.

APPEAL from a judgment of the Court of First Instance of Tarlac. de Aquino, *J.*

The facts are stated in the opinion of the Court.

First Assistant Solicitor General Guillermo E. Torres and *Assistant Solicitor General Jaime de los Angeles* for the plaintiff and appellee.

Tirso U. Aganon for defendant and appellant.

BENGZON, *J.:*

On September 6, 1950, the lifeless body of Teodora Sese, 60, was found in a creek at Barrio Dolores, Tarlac, Tarlac. From all appearances, she had been the victim of violence.

An information filed in May 1951 after the corresponding investigation, charged Marcelino Bacsa, Evaristo de los Santos, Pedro Gaspar, Ernesto Gaspar and Martin Granil with the crimes of robbery with homicide of the aged woman, plus multiple rape committed on Celestina Torres, probably her relative. In February 1952, after Gregorio Bacsa had been arrested, another information was filed describing the same offenses allegedly committed by him in conspiracy with the five defendants already mentioned.

A joint trial ensued. Discharged to be state witnesses over the objection of the defendants, Martin Granil and Marcelino Bacsa testified for the prosecution. After weighing the evidence submitted on both sides, the district judge found Gregorio Basca guilty of the crimes described in the information, and sentenced him to life imprisonment and to pay ₱3,000.00 to the heirs of the

deceased plus costs. However, for reasonable doubt, he acquitted the other three accused. Gregorio Bacsa appealed in due time.

With a few modifications, the statement of the appellant's brief summarizing the evidence for the prosecution may be adopted: "In the afternoon of September 3, 1950, while Martin Granil was in his house at Barrio Barasbaras, Tarlac, Tarlac, Marcelino Bacsa arrived alone. He went to invite him to help him harrow a piece of land the following morning. Later, Evaristo de los Santos, Ernesto Gaspar, Pedro Gaspar and Gregorio Bacsa arrived in his house. They stayed there about two minutes and when they were about to leave, they invited Martin Granil and Marcelino Bacsa to go with them to Bacuit, Tarlac, Tarlac, at the house of Gregorio Bacsa. It was after a certain degree of insistence on their part that Martin Granil and Marcelino Bacsa finally consented to go with them. Upon reaching the barrio of Bacuit, they did not go directly to the house of appellant, but they stopped at the store belonging to the deceased Teodora Sese. They left Barasbaras for Bacuit at past four o'clock in the afternoon. The distance between the house of Martin Granil and the store of Teodora Sese is more than one kilometer. * * * Gregorio Bacsa told Teodora Sese to sell them wine but Teodora Sese told him that she cannot give them any wine unless he would pay for his debt first. * * * Appellant reiterated that she sell wine to them. Teodora Sese adamantly refused to give them wine, whereupon appellant brought out his pistol and pointed same to the old woman and said, "You keep quiet. If you make any fuss, I will kill you." When Martin Granil and Marcelino Bacsa saw what appellant was doing, they started to leave, but Evaristo de los Santos, Pedro Gaspar, Ernesto Gaspar, and appellant went after them and said, "You return, otherwise, we will kill you." * * * Then "they took her down the house and brought her to a place behind it." * * * Evaristo de los Santos and Gregorio Bacsa returned to the house, and when they returned * * * they were bringing with them a girl named Celestina Torres." These two "took the girl to a place north of the house; they were followed by their companions together by the old woman. When they reached a place about 50 meters away, * * * Marcelino Bacsa, Martin Granil, Ernesto Gaspar, Pedro Gaspar and Teodora Sese stopped and waited. Evaristo de los Santos, Gregorio Bacsa with Celestina Torres went ahead. After a while, Gregorio Bacsa went to the place of their companions. Whereupon Ernesto Gaspar and Pedro Gaspar also went to the place where Celestina Torres was with Evaristo de los Santos. Later Ernesto Gaspar and Pedro

Gaspar returned to the place where Teodora Sese was with Martin Granil and Marcelino Bacsa; upon their return, Gregorio Bacsa returned to the place where Celestina Torres was, and then he and Evaristo de los Santos brought Celestina Torres back to the house. Then they "joined Martin Granil and others, * * * Evaristo de los Santos and Gregorio Bacsa took hold of Teodora Sese by the arm and proceeded towards the North, while the others followed. The two (Evaristo de los Santos and Gregorio Bacsa) brought Teodora Sese to a corral which had been used for carabaos and upon reaching the bed of a dry creek, they stopped." * * * Whereupon "Evaristo de los Santos beat Teodora Sese with a piece of wood at the head, causing her to fall down with her face down; Gregorio Bacsa picked up a big stone and threw it at the head of Teodora Sese. After that, Evaristo de los Santos and Gregorio Bacsa went to where their companions were seated at the edge of the creek, and said "Let us go." Then they left, leaving behind Teodora Sese. On their way, they opened the three boxes which (the party had taken from the house) were found to contain wine. They drank wine. Then Martin Granil and Marcelino Bacsa were told to go home, while Gregorio Bacsa, Evaristo de los Santos, Ernesto Gaspar and Pedro Gaspar went together. According to Celestina Torres, she had sexual intercourse with Gregorio and his companions."

This 15-year old girl swore it was Gregorio Bacsa who, in a secluded spot near a bamboo grove, brutally assaulted her with the help of Evaristo de los Santos. She lost consciousness when his other companions took turns in raping her. Her testimony tallied with that of Marcelino Bacsa, who said Evaristo de los Santos, Pedro Gaspar and Ernesto Gaspar also ravished the unconscious girl, following the example of Gregorio Bacsa.

The prosecution's case, be it noted, rested principally on the sworn assertions of Martin Granil, 25, and Marcelino Bacsa, 29, who were two of the original defendants, but who were discharged at the request of the fiscal. They witnessed the events related by them; and although their testimony as *participes criminis* should be scrutinized as coming from a polluted source, we perceive no reason to doubt their narration, considering that the first is the brother-in-law and the second, the brother of this accused-appellant, Gregorio Bacsa. The family misunderstandings supposedly existing between them are not sufficiently serious to induce such witnesses to swear falsely against their near-relative, on a matter which might entail capital punishment.

The appellant, however, imputes irregularity to the trial judge in permitting the release of *two* defendants;

because Rule 115, sec. 9, according to him, contemplates the discharge of *only one*. We do not think the said Rule implies a prohibition against the discharge of more than one co-defendant. It all depends upon the needs of the fiscal and the discretion of the trial judge. Anyway, any error of the trial judge in this matter cannot have the effect of invalidating the testimony of the discharged co-defendants. [1]

He urges, furthermore, that Martin Granil should not have been utilized because he had reportedly confessed before a barrio lieutenant to a previous attempt against the virtue of a married woman. Yet the rule disqualifying co-defendants from the benefit of exclusion speaks of "conviction" of an offense—which is not the case.

As to Marcelino Bacsa, the appellant points out to his having been confined at the Philippine Training School at Welfareville for the offense of robbery. But it does not appear that at the time of releasing Marcelino the trial judge knew this confinement. [2] At any rate once the discharge is ordered, any future development showing that one or all of the five conditions have not actually been fulfilled may not affect the legal consequences of such discharge [3]—which even though erroneous, does not by itself affect the testimony of the liberated co-defendant nor his competency to testify. [4]

We regard the testimony of these two co-accused and of the offended girl, sufficiently convincing in view of the proof of the *corpus delicti* and the corroboration offered by Vicente Figueroa, 49, who saw Gregorio Bacsa and other persons at the store of Teodora Sese that afternoon, and by the two physicians who examined the corpse, and the genitals of Celestina Torres. Strongly confirming such direct evidence by eye-witnesses, is the circumstance that the accused, a few months after the crime,—probably when the investigation yielded some evidence against him—left his place of residence, sold his horse and calesa, even his house, and went to live in different towns, evidently concealing his whereabouts, because he was not apprehended until February 1952, notwithstanding a warrant for his arrest had been issued on March 13, 1951. He gave no reason for his departure and prolonged

[1] People *vs.* Badilla, 48 Phil. 718; People *vs.* Marcellana, 44 Phil. 591.

[2] Supposing that confinement in the Reformatory, without more, is "conviction." Art. 80 Revised Penal Code provides. "The Court * * * instead of pronouncing *judgment of conviction*, shall suspend all proceedings and *shall commit* such minor etc. . . ."

[3] People *vs.* Mendiola, 46 Off. Gaz. 3629.

[4] U. S. *vs.* Abanzado, 37 Phil. 658; U. S. *vs.* Alabot, 38 Phil. 698.

absence. Needless to say, flight when unexplained is proof of guilt. [5]

Contrasted with such direct and circumstantial incriminating evidence, defendant's alibi proved weak indeed. That afternoon, he swore, he went home at about six o'clock, fed his horse, rested, and then went to sleep. Early the next morning he woke up to drive his calesa according to his daily routine. Nevertheless, he neglected to present his 14-year-old son, who lived with him to corroborate his account; the implications are necessarily unfavorable.

This prisoner must therefore be declared guilty of robbery with homicide and rape. In line with previous decisions, the rape should be deemed to aggravate the robbery. [6] This together with the aggravation of dwelling and sex and age of the deceased should call for capital punishment. However, lacking sufficient votes, we have to affirm the life term (plus indemnity) imposed by the court below. Appellant should, in addition, indemnify Celestina Torres in the sum of ₱1,000.00. [7] Thus modified, the appealed decision is affirmed with costs against him. So ordered.

Parás, C. J., Montemayor, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

FÉLIX, *J.,* Concurring and Dissenting:

I concur in the decision in so far as it declares appellant Gregorio Bacsa guilty of the special offense of robbery with homicide aggravated by the circumstance of dwelling and to his sentence to the capital punishment though this penalty cannot be imposed to appellant who is sentenced to *reclusión perpétua* for lack of sufficient number of votes for the imposition of the death penalty.

The crime of rape, however, is not an aggravating circumstance of the special offense of robbery with homicide, when the former attends the commission of the latter offense, and as the information filed in the case charging the crime of robbery with homicide and rapes, was not assailed *in any way* by appellant, I am of the opinion that he must also be sentenced accordingly, i.e., to as many penalties of *reclusión temporal* in its maximum period as there are rapes committed on Celestina Torres by Gregorio Bacsa and his co-offenders, *in addition* to the indemnity of ₱1,000.00 to Celestina Torres already imposed in the decision.

Judgment affirmed with modification.

[5] U. S. *vs.* Sarikala, 37 Phil. 486; U. S. *vs.* Virrey, 37 Phil. 618.
[6] People *vs.* Ganal, 47 Off. Gaz. 4614; People *vs.* Carillo, 47 Off. Gaz. 4158; See also People *vs.* Medina, 71 Phil. 383.
[7] U. S. *vs.* Reyes, 10 Phil. 83; U. S. *vs.* Torres, 13 Phil. 755.

[No. L-5707. March 27, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* DIONISIO VERSOLA, defendant and appellant

1. LICENSES; ANY MILL WHERE PALAY IS RECEIVED MAINLY FOR MILLING; APPLICABILITY OF ACT 3893.—Act No. 3893 explicitly applies to any mill enclosed in a structure where palay is received mainly for milling. In the ordinary course of business *this purpose cannot be accomplished without keeping the palay for some time in the mill, and hence without storing therein said commodity.*

2. ID.; ID.; NECESSITY OF SECURING LICENSE.—Whenever a rice mill, engaged in the business of hulling palay for others, is housed in a "camarin" as in the case at bar, the keeping of palay or rice therein follows as a necessary consequence. This is true, even if the grains were received therein exclusively for milling purposes. Hence, one way or the other, there is a form of storage, the duration of which may vary depending upon circumstances. In any event the rice mill operator is responsible for the palay or rice, while the same is in his possession, and public policy or public interest demands that the rights of the owners of the commodity—which is our main staples—be duly protected. Hence, the need of securing the license prescribed in Act No. 3893, in order that the Director of Commerce could determine the conditions under which the mill may be authorized to operate, comformably with the objectives of said legislation, and the amount of the bond to be required for the protection of the people who avail themselves of its services.

APPEAL from a judgment of the Court of First Instance of Cotabato. Sarenas, *J.*

The facts are stated in the opinion of the Court.

Francisco Calderón for defendant and appellant.

Solicitor General Ambrosio Padilla and *Solicitor Florencio Villamor* for plaintiff and appellee.

CONCEPCIÓN, *J.:*

This is an appeal, taken by defendant Dionisio Versola, from a decision of the Court of First Instance of Cotabato, convicting him of operating a rice mill without a license therefor, in violation of section 3 of Act No. 3893, otherwise known as "The General Bonded Warehouse Act," and sentencing him to pay a fine of ₱10.00, with subsidiary imprisonment in case of insolvency, as well as the costs, and the amount of the license, required by law, for the year 1951, and, also, to file the bond prescribed in said Act.

Appellant is the owner and operator of a rice mill, enclosed within a structure or "camarin", 6 by 8 meters, made of wooden posts and partition walls, with cogon roof, located in the barrio of Banawa, municipality of Kabacan, province of Cotabato, Philippines. It is not disputed that in January, 1951, and prior thereto, appellant accepted and milled palay in his aforementioned "camarin",

and charged therefor from ₱0.50 to ₱0.80 per cavan, without securing the license provided for in Act No. 3893, from the Bureau of Commerce. What is more, he refused to obtain said license, although a representative on said office had urged him to secure one. Appellant maintains that his mill is not subject to the provisions of said Act, upon the ground that the structure above mentioned is used for milling only, not for the storage and deposit of palay or rice; that, sometimes, his customers bring small quantities of palay, ranging from one petroleum can to a sack; and that the palay or rice received in his "camarin" is not kept therein for over an hour.

Sections 3, 4 and 5 of Act No. 3893 read:

"SEC. 3. No person shall engage in the business of receiving rice for storage without first securing a license therefor from the Director of the Bureau of Commerce and Industry. Said license shall be annual and shall expire on the thirty-first day of December.

"SEC. 4. Any person applying for a license to engage in the business of receiving rice for storage shall set forth in the application the place or places where the business and the warehouse are to be established or located and the maximum quantity of rice to be received. The application shall be accompanied by a cash bond or bond secured by real estate or signed by a duly authorized bonding company, the amount of which shall be fixed by the Director of the Bureau of Commerce and Industry at not less than thirty-three and one-third per cent of the market value of the maximum quantity of rice to be received. Said bond shall be so conditioned as to respond for the market value of the rice actually delivered and received at any time the warehouseman is unable to return the rice or to pay its value. The bond shall be approved by the Director of the Bureau of Commerce and Industry before a license shall issue, and it shall be the duty of said Director, before issuing a license under this Act, to satisfy himself concerning the sufficiency of such bond, and to determine whether the warehouse for which such license is applied for is suitable for the proper storage of rice.

"SEC. 5. Whenever the Director of the Bureau of Commerce and Industry shall determine that a bond approved by him, is, or for any cause, has become insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of the preceding section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked."

At first blush, these provisions would seem to apply only to warehouses actually used for storage of rice, not for milling exclusively. However, section 2 of said Act provides:

"As used in this Act, the term 'warehouse' shall be deemed to mean every building, structure, or other protected inclosure in which rice is kept for storage. The term 'rice' shall be deemed to mean either palay, in bundles or in grains, or cleaned rice, or both. 'Person' includes a corporation or partnership or two or more persons having a joint or common interest; 'warehouseman' means a person engaged in the business of receiving rice for storage; and 'receipt' means any receipt issued by a warehouseman

for rice delivered to him. *For the purpose of this Act, the business of receiving rice for storage shall include* (1) any contract or transaction wherein the warehouseman is obligated to return the very same rice delivered to him or to pay its value; (2) *any contract or transaction wherein the rice delivered is to be milled for and on account of the owner thereof*; (3) any contract or transaction wherein the rice delivered is commingled with rice delivered by or belonging to other persons, and the warehouseman is obligated to return rice of the same kind or to pay its value." (Italics ours.)

It is admitted that appellant has been engaged in transactions pursuant to which the palay "delivered is to be milled for and on account of the owner thereof". It is clear, therefore, that his business falls under the second subdivision of the foregoing enumeration.

Appellant insists, however, that the provisions above quoted could have no possible application where rice is delivered, not for storage, but for milling purposes, as, he claims, in his case. However, we are inclined to hold otherwise. To begin with, the law explicitly applies to any mill enclosed in a structure where palay is received mainly for milling. Secondly, in the ordinary course of business, *this purpose cannot be accomplished without keeping the palay for some time in the mill, and, hence, without storing therein said commodity.*

For obvious reasons, every region has its own harvest and milling seasons. When the same come, the palay planted in each region are harvested at about the same time. As a consequence, the bulk of said palay is likewise milled within the same period of time. When the rice mill is—as that of appellant herein— one of the only two (2) existing within the perimeter of three (3) barrios, with hundreds of families residing therein, it is bound to be heavily pressed by the demands of its customers during the milling season. As a consequence, not all palay brought to the mill could always be hulled immediately, much less removed therefrom within one hour. This is specially true when we consider that no person could possibly live and support his family, if the field he cultivates produced only from a petroleum can to a sack of palay yearly. Normally, therefore, each one of those availing themselves of the services of said mill would have scores of cavanes of palay, the hulling of which would require some time. When the commodity belonging to a given customer cannot be milled right away, he is constrained, therefore, to leave it in the "camarin", for it would be inconvenient and impractical for him to take the grains back to his place, not only because of the time consummed, the trouble taken, and perhaps, the expenses incurred in bringing the cereals to the mill, but, also, because he would have to haul the palay once more to the mill, either the next day or at some other time, without any assurance

that others might not be ahead of him. In other words, it is generally more advantageous for said customer to leave in the "camarin" the palay above referred to, for hulling when its turn should come.

Upon the other hand, it is not to be expected that the owner or operator of the mill would refuse to receive palay which, owing to pending work, could not be milled forthwith. In fact, appellant did not testify that he rejected such palay. What is more, appellant had to *increase* the size of his "camarin", from six (6) by six (6) meters—as it was originally built—to six (6) by eight (8) meters. This indicates clearly that he had found it necessary to make more room *for the storage* of commodities therein.

At any rate, whenever a rice mill, engaged in the business of hulling palay for others, is housed in a "camarin" like that of appellant herein, the keeping of palay or rice therein follows as a necessary consequence. This is true, even if the grains were received therein exclusively for milling purposes. Hence, one way or the other, there is a form of storage, the duration of which may vary, depending upon circumstances. In any event, the rice mill operator is responsible for the palay or rice, while the same is in his possession, and public policy or public interest demands that the rights of the owners of the commodity—which is our main staple—be duly protected. Hence, the need of securing the license prescribed in Act No. 3893, in order that the Director of Commerce could determine the conditions under which the mill may be authorized to operate, conformably with the objectives of said legislation, and the amount of the bond to be required for the protection of the people who avail themselves of its services.

This appeal is, therefore, untenable. However, we agree with the Solicitor General that, under the provisions of said Act, the lower court had no authority to order, in this criminal case, the payment by appellant of the license for 1951, and the filing of the bond aforementioned. These are not part of the penalty prescribed by law for the offense charged, apart from being within the administrative jurisdiction of the Director of Commerce.

WHEREFORE, with the elimination of the order just mentioned, the decision appealed from is hereby affirmed, in all other respects, with costs against defendant-appellant Dionisio Versola.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Judgment affirmed.

[No. L-7923. November 29, 1957]

INTESTATE ESTATE OF THE DECEASED ELIGIO NAVAL, PETRITA PASCUAL AND RUDYARDO SANTIAGO, co-administrators. POTENCIANO GABRIEL, ET AL., plaintiffs and appellants, *vs.* ISABEL GABRIEL VDA. DE NAVAL and ANGEL PASCUAL, administratrix and co-administrator, respectively, defendants and appellees.

EVIDENCE; CLAIMS AGAINST ESTATE OF DECEASED PERSONS; PAROL EVIDENCE ON MATTERS THAT TOOK PLACE PRIOR TO DEATH OF DEBTOR, WHEN ACCEPTABLE.—Claimants against the estate of deceased persons are incompetent to testify as to any fact that took place prior to the death of the alleged debtor. Testimony of this character, that can not be contradicted for tbe reason that the other party can no longer appear and testify, warrants extreme wariness in accepting it, unless adequately corroborated by clear and impartial evidence.

APPEAL from a judgment of the Court of First Instance of Rizal. Encarnacion, *J.*

The facts are stated in the opinion of the Court.

Alberto S. Plantilla for plaintiffs and appellants.

Carlos, Laurea, Fernando & Padilla for oppositors and appellees.

Cipriano P. Paraiso for widow Isabel Gabriel and co-administrator Rudyardo Santiago.

REYES, J. B. L., *J.:*

Against the Estate of the late Eligio Naval, who died in 1936 without surviving descendants or ascendants, various money claims were filed by his father-in-law, Potenciano Gabriel, and his sisters-in-law, Trinidad and Eulalia Gabriel. The estate was appraised at ₱95,355 as of June 1938; on the other hand, the claims of the Gabriels amounted to ₱138,472, as follows:

(*a*) Potenciano Gabriel, father of the widow Isabel Gabriel, in his own behalf	₱74,909.00
(*b*) Potenciano Gabriel, father of the widow Isabel Gabriel, as heir of Remigia Gabriel, sister of the widow Isabel Gabriel	20,726.00
(*c*) Trinidad Gabriel, sister of the widow Isabel Gabriel	15,550.00
(*d*) Eulalia Gabriel, sister of the widow Isabel Gabriel	17,757.00
(*e*) Modesto Bautista, husband of Eulalia Gabriel and brother-in-law of the widow Isabel Gabriel	9,530.00
TOTAL	₱138,472.00

The indebtedness was allegedly incurred through loans made to the deceased on various dates and occasions.

The claims were resisted by the brothers and sisters of the deceased, as his heirs intestate. One of the latter, Petrita Pascual, had been appointed administratrix, *vice* the widow Isabel Gabriel, who was removed in 1948 on

account of irregularities in the course of her administration.

After trial, the Court of First Instance of Rizal by decision rendered on July 14, 1942 (Sp. Proc. No. 6617), rejected the claims of the father-in-law and sisters-in-law of the deceased as false, except a claim of ₱100 by the father-in-law, Potenciano Gabriel, which was allowed. The decision was appealed by the claimants to the Supreme Court where it was docketed as G. R. No. 48901; but as the records and evidence were partly destroyed on occasion of the liberation of Manila and the lost evidence could not be reconstituted, the case had to be remanded to the court of origin for new trial and decision. The hearings having been duly held, the Court of First Instance of Rizal rendered a new decision on December 15, 1953, once more disallowing the claims. An appeal was again interposed and was docketed in this Court as G. R. No. L-7923.

The mainstay of appellants' evidence is the document designated as Exhibit X. It purports to be a copy of a private deed bearing the signatures of the deceased Naval and his wife, Isabel Gabriel, and executed on March 1, 1936, wherein the spouses acknowledge being indebted to Potenciano Gabriel in the amount of ₱69,898.; to Remigia Gabriel, ₱17,226; to Eulalia Gabriel, ₱17,757 and to Trinidad Gabriel, ₱14,850.

The production of this document at the new trial was suspicious from the very start. The records of the case are clear that the original of the document had been one of the exhibits presented during the first trial in 1936 and rejected by the trial judge as a forgery. Attached to the records elevated to the Supreme Court on appeal of the claimants (G. R. No. 48901), said original was admittedly destroyed on occasion of the battles for the liberation of Manila. In 1946, notices were issued requiring counsel for both parties to state whether they had copies to present for the reconstitution of the destroyed records. Counsel for the claimants then manifested that they had *no other* papers or pleadings to be presented; and in subsequent proceedings in the Court of First Instance, no attempt was made to present copies of the destroyed Exhibit X until the hearing of September 22 of 1953.

It was the theory of the claimants that this new Exhibit X constitutes an *original copy* of the exhibit that was destroyed with the records of the previous case; that said copy and its existence had been forgotten by the claimants, until the new counsel had taken pains to examine one by one all the papers left in their possession and luckily found the aforesaid copy. This is

shown by the question propounded by counsel for claimants in the court below:

"Q. Showing to you this document which has been marked as Exhibit X, *original salvaged from the last war and existing now*, do you recognize this document?" (t.s.n. p. 12.)

The trial court refused to give credit to this Exhibit X, for the reason that it could not be a signed original copy and remain authentic, inasmuch as Trinidad Gabriel herself had asserted (on cross-examination) that only *one* original had been signed by Eligio Naval (t.s.n. pp. 5,6), and that all the exhibits of the previous case (including the original of Exhibit X) had been destroyed; and the claimants themselves so admitted in their motion for new trial of April 17, 1950. From which the necessary inference is that Exhibit X is a forgery, and of no probative value. The trial court cogently reasoned out as follows:

"Pero como es posible que un documento privado firmado el 1.° de Marzo de 1936, y que fue sometido en juicio antes de la guerra, pueda resucitarse el año 1953, despues de 17 años, cuando se ha hecho constar formalmente, tanto en las actuaciones ante el Tribunal Supremo como en los procidimientos ante este Juzgado, que ya no existe ningun otro papel o documento relativo a estas reclamaciones? Ademas, Trinidad Gabriel declaro que solo hubo un original del documento firmado por el difunto." (Rec. App. p. 133.)

In order to circumvent the forcible reasoning of the court below, appellants now contend on appeal that their Exhibit X is not an *original copy*, as they had previously asserted, but a *carbon* copy of the destroyed exhibit. This spacious turnabout is of no help to claimants. Our examination of this new Exhibit X, with the naked eye as well as under magnification, convinces us that it is *not a carbon copy*, as belatedly argued by claimants. The clearness of the imprints it bears of the texture of the typewriter ribbon that was used, is proof positive that it is an original typewriting, bearing the purported signature of the deceased Naval, and as such it can not be but falsified, since the only signed copy of this alleged acknowledgment of indebtedness was destroyed with the other exhibits of the preceding case R. G. No. 48901. In addition, the numerous retouchings of the alleged signature of Eligio Naval, retouchings entirely unnecessary for its legibility, reinforce this conclusion.

Exhibit Y purports to be a letter of transmittal of Exhibit X, and can not have greater probative value than the latter. As to the other exhibits, they have no independent evidentiary weight, being merely alleged pencil copies of the destroyed original promissory notes. Moreover, the trial court has observed that the appearance and condition of these copies belie the claim that they were

made around 1937, contemporaneously with the originals, and our own observation justifies the distrust of the trial judge (Rec. App. p. 134). Like Exhibit X, these exhibits were not presented during the reconstitution proceedings, as they would have been if they were in existence at that time.

There remains the oral evidence. As to the testimony of Isabel Gabriel, the widow of the deceased, it is significant that both the judge who heard her testify in the original proceedings as well as the one who presided at the new trial, considered this witness unworthy of credit in view of her manifest bias in favor of the claimants, who are her father and sisters. In addition, her evident hostility toward the relatives of her husband, and her decided intent to exclude them from all participation in her estate, were manifested in her actuations as the administratrix of the estate. As noted by the court below, her failure to submit a true inventory of the estate and her submission of accounts that the probate court found false and contradictory (Resolution of October 28, 1935) do not warrant relying on her sole and uncorroborated testimony.

As to that of Trinidad Gabriel, sister of the widow Isabel Gabriel, the trial court has correctly discarded it upon objection that, being the claimant herself, she was incompetent to testify as to any matter that took place prior to the death of the alleged debtor. (Rule 123, section 26, paragraph (*c*) of the Rules of Court; Maxilom *vs.* Tabotabo, 9 Phil. 390; Kiel *vs.* Estate of Sabert, 46 Phil. 193; Icard *vs.* Masigan and Icard, 71 Phil. 419; Amante *vs.* Manzanero, 71 Phil. 553; Legarda *vs.* Jureidini, 46 Official Gazette 631).

In any event, testimony of this character, that can not be contradicted for the reason that the other party can no longer appear and testify, warrants extreme wariness in accepting it unless adequately corroborated by clear and impartial evidence, which is here non-existent.

"Public policy requires that claims against the estates of the dead should be established by very satisfactory evidence, and the courts should see to it that such estates are fairly protected against unfounded and rapacious raids." (Van Slooton *vs.* Wheeler, 140 M. Y. 624, 633, 35 NE. 583.)

"Where the person by whom alone an interested witness can be contradicted is dead, a degree of proof formally greater than a preponderance of evidence is probably not required but the circumstance affects the weight of the evidence and is proper for consideration in determining on which side the preponderance of the evidence lies." (Wylie *vs.* Charlton, 43 Neb. 840; 62 NW. 220.)

"Where an account of circumstances leading to a loss is entirely within the control of one side of a controversy, there is more of a burden upon such party than where the matter has been open to the other side for an ascertainment of the facts." (The Manitou, 116 Fed. 60, 63.)

Considering further that the claimants have resorted to false and frabricated evidence, a conduct entirely inconsistent with a truthful and honest claim, we see no reason for giving credit to their testimony. This Court has ruled that where "forgery has been resorted to in order to strengthen the testimony, we must regard it as practically worthless." (Gonzales *vs.* Mauricio, 53 Phil. 728, 736).

The decision appealed from is hereby affirmed *in toto*, with costs against the appellants.

The trial court is instructed to refer Exhibit X to the provincial fiscal, for investigation and such action as the investigation may warrant.

SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Endencia and *Felix, JJ.*, concur.

Judgment affirmed in toto.

[No. L-11232. March 28, 1958]

INTERNATIONAL TOBACCO CO. INC., petitioner, *vs.* HON. NICASIO YATCO, ETC., respondent

1. PLEADING AND PRACTICE; FAILURE OF PLAINTIFF TO APPEAR AT HEARING; EFFECT OF; DISMISSAL AMOUNTING TO ABUSE OF DISCRETION; CASE AT BAR.—While the failure of the petitioner or his representatives to appear at the hearing of its claim may authorize the court to dismiss the claim, however, if after the dismissal, a formal motion for reconsideration was filed on well-founded ground, the respondent Judge should not resort to legal technicalities to maintain his order of dismissal, for the claim involves a big amount and it was duly admitted by the other party. Certainly, in denying petitioner's motion for reconsideration, the respondent Judge committed a grave abuse of discretion amounting to a virtual refusal to perform his duty to liberally apply and construe the Rules of Court which requires courts of justice, in the exercise of their functions, to act reasonably and not capriciously, in order not to commit grave abuse of discretion that may deprive the parties of well asserted right or rightful claim.

2. ID.; ID.; ID.; CERTIORARI INSTEAD OF APPEAL, PROPER REMEDY.—While ordinarily, in cases like the one at bar, appeal is the proper remedy, however, in this particular case, when the time to appeal might have expired and the order of dismissal in question might have become final, and thus the petitioner may have no adequate remedy to protect its right and interest in the matter, certiorari will lie in order to correct a clear abuse of discretion, which, if not corrected, will produce a glaring injustice.

ORIGINAL ACTION in the Supreme Court. Certiorari and Mandamus.

The facts are stated in the opinion of the Court.

Vicente Raul Almacén for the petitioner.
Jaime Agloro for the respondent.

ENDENCIA, *J.:*

Petitioner brought this action to secure the annulment of the order of respondent Judge of July 10, 1956, dismissing a claim in the sum of ₱100,000, filed against the estate of the deceased Co Keng in Special Proceeding Q-587 of the Court of First Instance of Rizal, Branch V, as well as the order of August 30, 1956, denying the motion for reconsideration of said order of dismissal.

Briefly stated, the facts of the case are as follows: Petitioner International Tobacco Co., Inc., through its treasurer Yeng Huy, filed on February 21, 1956, in the aforementioned case, a claim for ₱100,000 and served copy thereof to the duly appointed administrator of the estate, Francisco Co Keng, who through his counsel Villareal & Amacio, on March 1, 1956 petitioned the court that he be given time to file his answer to the claim. The petition was granted by the respondent Judge, and on March 7,

1956, Francisco Co Keng filed a verified answer admitting that the deceased Co Keng was really indebted to the petitioner in the aforesaid amount of ₱100,000; that the said sum has not yet been paid and, therefore, offered no objection to the approval of the claim. In view of the answer, the claim was set for hearing on March 7, 1956, on which date Pedro T. Mendiola appeared in behalf of the claimant and presented to the respendent Judge the original voucher of the International Tobacco Co., Inc. showing the indebtedness of the deceased Co Keng and a copy of the promissory note for the aforesaid sum, duly signed by the deceased Co Keng. These document were then examined by the respondent Judge who made some remarks about them—the nature of which does not appear clear in the record—and which remarks prompted Assistant Attorney of Quezon City, Jaime Agloro, who appeared for the regional agent of the Internal Revenue of Quezon City, to petition the respondent Judge to hold in abeyance any action on the claim due to the fact that the regional BIR agent has not completed his report on the state and inheritance taxes due from the estate of the deceased. This petition was granted by the respondent Judge.

On June 4, 1956, Assistant City Attorney Jaime Agloro again requested deferment of action on the claim in question, alleging that the report of the regional BIR agent was not yet finished, so the hearing of the claim was postponed for July 10, 1956; and when the claim was called for hearing on the appointed date, Assistant City Attorney Agloro appeared manifesting that he was ready to submit the report of the regional BIR agent. Pedro T. Mendiola failed however to appear and the respondent Judge forthwith dismissed the case, for lack of interest of the petitioner and adjourned the session. About ten minutes later, Francisco Co Keng and his attorney Federico Amacio and Pedro T. Mendiola arrived and were informed by the deputy clerk of court that the claim was already ordered dismissed. When the session was resumed, Atty. Federico Amacio and Pedro T. Mendiola verbally moved for the reconsideration of the order of dismissal, but the respondent Judge, instead of acting thereon, ordered them to put the motion in writing since the order of dismissal had already been dictated in open court. Accordingly, on July 11, 1956, petitioner filed a verified motion for reconsideration on the following ground:

"That Mr. Pedro Mendiola, representative of the International Tobacco Co., Inc., and claimant herein arrived in the court room just TEN (10) minutes after this case was called at 8:30 of July 10, 1956;

"That the delay of Mr. Pedro Mendiola was unforseen caused principally by the unpredictable congestion of traffic from San

Nicolas District, Tondo, Manila to Quezon City on that day of hearing, the truth of such is hereinbelow attested under oath by the said Mr. Pedro Mendiola;

"That the claim of ₱100,000 filed by the International Tobacco Co., Inc., with the estate of the deceased Co Keng has been duly presented to this Honorable Court with incontrovertible documentary proofs at the previous hearings of this case, as a matter of fact the administrator of the estate has no objection to said claim as well as the Internal Revenue Office which observation and recommendations for its allowance are with the Fiscal's Office;

"That it has never been the intention of the herein claimant to abandon their claim, the same being a valid, just and subsisting claim of ₱100,000, Philippine currency.

"That the present claim is submitted pursuant to the order of this Honorable Court that motion for reconsideration be made in writing and above all, in the interest of JUSTICE we most deferentially begs the reconsideration of subject ORDER dismissing the claim of the International Tobacco Co., Inc. for ₱100,000.

"WHEREFORE, in view of the foregoing it is most respectfully prayed this Honorable Court that the ORDER dictated in open court last July 10, 1956 dismissing the claim of the International Tobacco Co., Inc., for failure of the parties to appear on that date of hearing, be reconsidered and lifted."

The respondent Judge denied the foregoing motion, hence the filing of the present action.

In his answer to the petition, the respondent Judge practically admitted all the facts of the case as stated above, but, by way of affirmative defense, averred that the proper remedy was appeal in due time and not certiorari, contending that "the order of dismissal dated July 10, 1956 is not interlocutory in character but a final judgment on the case from which an appeal lies."

As could be seen, the dismissal was, according to the respondent Judge, due to lack of interest of the petitioner because its representative Pedro T. Mendiola failed to appear on July 10, 1956 when the claim was called for hearing. It, however, appears that Pedro T. Mendiola arrived in court moments after the order of dismissal was dictated in open court and that, upon learning it, immediately moved the Court verbally that the dismissal be reconsidered and following the suggestion of the court a formal petition reiterating his verbal motion for reconsideration was filed. Petitioner, therefore, never lost interest in the claim—and we believe that he would not lose interest therein because the claim involves the considerable amount of ₱100,000 which was admitted by the administrator of the intestate estate of Co Keng to be true and unpaid—and therefore the respondent Judge, in our opinion, acted hastily when he dismissed the claim and certainly abused his discretion when he denied the verified motion for reconsideration which avers satisfactory explanation of Pedro T. Mendiola's negligible delay to appear in court in due time. We do not overlook that the failure of Pedro T. Mendiola to appear on the very hour and date

set for hearing of the claim in question may authorize the court to dismiss it; but after the dismissal, when a formal motion for reconsideration was filed on well-founded ground, the respondent Judge should not have resorted to legal technicalities in maintaining his order of dismissal, for he should have realized that the claim involves a big amount of money and was duly admitted by the other party. Thus, we find that the respondent Judge committed a grave abuse of discretion amounting to a virtual refusal to perform his duty to liberally apply and construe our Rules of Court which requires our courts of justice, in the exercise of their functions, to act reasonably and not capriciously, and enjoins them not to commit grave abuse of discretion that may deprive the parties of well asserted right or rightful claim.

Anent the respondent's contention that the remedy was appeal from the disputed orders, we find that, ordinarily, in cases like the one at bar, appeal is the proper remedy; but in this particular case, were we to apply the ordinary rule, since the time to appeal might have expired and the order of dismissal in question might have become final, actually the petitioner may have no adequate remedy to protect its right and interest in the matter. Certainly, were we to dismiss the case on the technical ground that the remedy was appeal, a glaring abuse of discretion may remain uncorrected and may produce its legal effect, thereby depriving the petitioner of its right to substantiate its claim amounting to ₱100,000, which was already admitted by the administrator of the estate of the deceased as still unpaid.

WHEREFORE, the petition is hereby granted, and the orders of July 10, 1956 and August 30, 1956, are hereby set aside and the respondent Judge ordered to hear and decide the petitioner's claim in accordance with law. Without costs.

Parás, C. J., Padilla, Montemayor, Bautista Angelo, Reyes, J. B. L., and *Félix, JJ.,* concur.

Petition granted; orders set aside.

[No. L-11251. July 31, 1958]

MAYON TRADING CO., INC., plaintiff and appellant, *vs.* CO BUN KIM, defendant and appellee

1. LEASE; RENTALS; POWER OF COURT TO FIX DATE WHEN IT SHOULD TAKE EFFECT.—Considering that the court has authority to fix the just and reasonable rental of a property (Roman Archbishop of Manila *vs.* Ver, 73 Phil. 373), it follows that it equally has the power to determine the date when it should take effect.

2. EJECTMENT; DEPOSIT OF RENTALS IN COURT; WHEN DEFENDANT MAY BE REQUIRED TO MAKE THE DEPOSIT.—Rule 72 of the Rules of Court requiring the occupant of the property, where the decision is adverse to him, to make a deposit of the rentals adjudged by the court, contemplates of instances when defendant is still in possession of the property subject of the litigation, the purpose being to compensate the owner for having been deprived of such possession of his premises. Otherwise, the reason behind such deposit ceases. To require defendant to continue depositing in Court the rentals for the use of the property, when he is no longer in occupancy of the same, does not only run conuter to the spirit behind the law but is also highly unfair and unreasonable.

APPEAL from a judgment of the Court of First Instance of Manila. Lucero, *J.*

The facts are stated in the opinion of the Court.

E. G. Cammayo for the plaintiff and appellant.
Elías Ro. Enverga for defendant and appellee.

FÉLIX, *J.:*

César Ledesma, Inc., was the owner of various parcels of land situated at Teodora Alonso st., Sta. Cruz, Manila, among which were Lots 1 and 22, Block 2109 of the cadastral survey of Manila, covered by Transfer Certificate of Title No. 36559 (Exhibit E), and Lot No. 2 covered by Transfer Certificate of Title No. 6460 (Exhibit 2).

Dr. Co Bun Kim erected in *1946* a 3-story building and an annex thereto (Nos. 731–733 and 735, Int., Teodora Alonso st.) occupying a combined area of 120 square meters covering not only Lot No. 2 but also a part of the contiguous Lot No. 1, with an area of 28.35 square meters.

On December 5, 1950, Co Bun Kim entered into a contract with the landowner for the lease of the land occupied by his said 3-story building (Nos. 731–733, and 735 Int., Teodora Alonso, the last number being on Lot No.1), and said contract provided, among other things, that the lease would be for a period of one year from December 1, 1950; that the rental for the occupancy of the property would be ₱600 payable within the first 15 days of every month; that upon the termination of the contract for any reason whatsoever, all improvements that the lessee may have built on the leased property would automatically become the property of the lessor without any further

consideration, except in the case of sale of the premises, in which event, it would be made a condition of the sale that the rights of the lessee would be respected by the purchaser; that during the lifetime of the lease, the lessee may not sell, assign, convey transfer or in any way dispose of the buildings erected thereon those to be erected; that in case of violation of the terms of said contract, the aggrieved party may terminate the same without notice, and to guarantee the payment of all the rentals stipulated and the faithful compliance by the lessee of the obligations created therein, a first mortgage in favor of the lessor was constituted on the aforesaid buildings (Exhibit 2).

On July 2, 1954, the lessor César Ledesma, Inc., sold to the Mayon Trading Corporation Lots Nos. 1 and 22 of the consolidation and subdivision plan Pcs–3694 with an area of approximately 825.60 square meters together with the improvement thereon, free from any charge, lien or encumbrance, save "the two buildings at the rear which are situated partly on Lot 1 and Lot 18 (the last lot must be lot No. 2) which buildings do not belong to the vendor" (Exhibit E). Apparently, the structures referred to are the buildings owned by the lessee Co Bun Kim.

On July 3, 1954, the purchaser informed Co Bun Kim that the annex to the latter's building, which was being utilized as stairway, dining room and kitchen, occupied a part of Lot No. 1 purchased by said corporation from César Ledesma, Inc., and invited to a conference for the purpose of fixing the rental therefor. As said invitation was not heeded by Co Bun Kim, the corporation sent another communication this time fixing the rental for the use of the premises at ₱100 a month starting July 1, 1954, which was followed by another letter dated August 13, 1954, demanding payment of the same. As Co Bun Kim continued to ignore these notices, the corporation sent another letter dated August 21, 1954, requiring payment of the rental and notifying him to vacate the premises in 5 days. On August 30, 1954, a complaint for ejectment against Co Bun Kim was filed with the Municipal Court of Manila (Civil Case No. 24557) praying that defendant be ordered to vacate the premises and to pay rentals for the occupancy thereof at the rate of ₱100 a month from July 1, 1954, until the same was finally vacated.

On October 1, 1954, the Municipal Court of Manila rendered judgment ordering defendant to vacate the parcel of land described in the complaint; to pay plaintiff the rents from July, 1954, until he finally leaves the premises at the rate of ₱100 a month; and the costs of the

suit. From this judgment, defendant elevated the case to the Court of First Instance of Manila, but to stay execution of the aforementioned judgment, he filed a supersedeas bond in the amount of ₱400 to cover the rentals from July to October, 1954, at the rate of ₱100 a month. In that instance, defendant contended that he had been occupying the premises since 1946 in virtue of a contract of lease duly annotated at the back of the certificate of title of the land which the buildings were located; that plaintiff was fully aware of the existence of said contract of lease and therefore was bound to respect the same; and that the reasonable rental for the use of the premises was only ₱20.00 a month, the amount he used to pay its previous owner César Ledesma, Inc. In praying for the dismissal of the complaint, defendant expressed willingness to sign another lease agreement with plaintiff on a just or reasonable rental should the latter be adjudged lessee of the portion being claimed by that corporation.

In reply thereto, plaintiff alleged that while it was aware of the existence of the contract of lease, it was also cognizant of the fact that the aforesaid agreement was violated by defendant which precipitated the filing by the lessor, César Ledesma, Inc., of an action for ejectment with the Court of First Instance of Manila (Civil Case No. 10101), wherein the latter obtained favorable judgment; that in accordance with the contract of lease aforementioned, defendant was paying César Ledesma, Inc., a monthly rent of ₱600.00 for the occupancy of the property with an area of 120 square meters or at the rate of ₱5 per square meter. As the portion of Lot No. 1 occupied by defendant had an area of approximately 30 square meters, it was contended that the reasonable rental therefor should have been ₱150 which was even higher than ₱100 which plaintiff demanded.

In a decision dated August 4, 1956, the Court, finding that defendant's building and its annex were there since 1945 and that plaintiff was aware of the existence thereof, ruled that although the lease contract did not appear on the certificate of title covering Lot No. 1, actual knowledge thereof amounted to registration and should therefore be respected. The Court likewise fixed the rental over the said property at ₱80 a month, effective July 1, 1954, until the expiration of the lease on November 30, 1950. And in case of non-payment thereof, it was provided that defendant should vacate the premises. From this decision, plaintiff appealed directly to this Court for the reason that it was raising purely questions of law. Thus it assigned as errors committed by the lower Court the following, to wit:

1. The court erred in its failure to take judicial notice in accordance with law, of the proceedings and court decision in Civil Case No. 10101, Court of First Instance of Manila, because of its close connection with the matter in controversy before making the conclusion that "plaintiff is bound to respect the contract of lease executed between César Ledesma, Inc., its predecessor and Co Bun Kim, dated December 5, 1950, which would expire on December 5, 1960"; and

2. The lower court erred in its failure to observe the law in evidence governing compromise, before making the conclusion that "as shown by the record of this case, on September 19, 1955, both parties agreed to fix ₱80 as the reasonable rental for the space of 28.35 square meters but their difference lies on the effectivity of that rental, it being the desire of defendant to have the rental of ₱80 a retroactive effect, to commence from July of 1954, while the plaintiff wanted ₱100 a month as shown by the order of the court of September 19, 1955.

There is no controversy as to the transfer of ownership of that portion of Lot No. 1 occupied by defendant's stairway, dining room and kitchen, nor as to the existence of the proviso in the lease contract (registered and annotated in TCT No. 6460, covering Lot No. 2, as defendant's claim to that effect was not disputed), that the lessee's right thereunder would be respected by the purchaser. But while much stress has been laid on the probative force of the lease contract entered into by defendant and plaintiff's predecessor-in-interest, We find this matter not decisive in the instant action the second assignment of error notwithstanding. The records bear out the fact that from the start, plaintiff Mayon Trading Corporation of its own accord manifested its amenability to the execution of a lease contract over that portion of Lot No. 1 occupied by defendant's building, and for that matter, the parties even tried to reach an amicable settlement while the action was already pending trial in the lower court. And although the parties were said to have agreed to fix the rent at ₱80 a month, they only failed to come to an agreement as to the date of effectivity of the compromise; plaintiff maintained that it should be made applicable only to prospective rentals and insisted on collecting the rentals at the rate of ₱100 a month from July, 1954, up to the date of such agreement or sometime in April, 1956, whereas, defendant asserted that it should be given retroactive effect. It is obvious, therefore, that since defendant is willing to pay the sum of ₱80 a month for the occupancy of the premises, an amount acceptable to plaintiff, the aforementioned contract of lease has no materiality to the instant case, for the new owner and the occupant of the premises are not in any way disqualified to enter into agreement or execute an entirely new and independent contract to govern their relations. Actually, the only question raised by the present appeal is whether or not the lower court erred in fixing the date

when the rental acceptable to both parties and which the Court found to be just and reasonable may take effect. We find no plausible reason why the lower court's ruling should not be affirmed, for considering that the court has authority to fix the just and reasonable rental of a property (Roman Archbishop of Manila *vs.* Ver, 73 Phil. 373), it follows that it equally has the power to determine the date when it should take effect.

We will now proceed with the disposition of the mutual accusations for contempt filed by both parties with this Court. It appearing that defendant-appellee's charge against César Arieta, president of Mayon Trading Corporation for having demolished the structure at 735 Int., Teodora Alonzo, subject of the instant action, was duly filed with the lower court, and was dismissed in its order of January 12, 1957, We can no longer pass upon the same. On the other hand, plaintiff-appellant likewise charges Co Bun Kim with violating the decision in Civil Case No. 10101 of the Court of First Instance of Manila ejecting him from the buildings at 731 Teodora Alonso st., by entering 735 Int., Teodora Alonzo the lot involved in this case and constructing a 3-story building thereon. It is noteworthy to mention that appellant charges appellee with violating the decree in Civil Case No. *10101,* which is different from the instant action, and thus such citation for contempt cannot be filed and entertained herein. Furthermore, it appears that at the instant of appellant, a demolition permit was issued by the City Engineer's Office on the strength of appellant's allegation that it was an illegal construction, and as a consequence thereof, the said building was actually dismantled and demolished. How could defendant be indicted for contempt, granting that this Court may legally take cognizance thereof, if the order of the lower Court was already accomplished with the demolition of the building subject of said order?

In this connection, it must be remembered that to stay execution of the decision of the Municipal Court of Manila, defendant filed a supersedeas bond and made monthly deposits of ₱100 with the Court of First Instance of Manila for the *use* of the premises. As plaintiff, equipped with an order from the Office of the City Engineer, had demolished on December 27, 1956, the building erected on the lot belonging to the former and barricaded the same thereby preventing him from using it, defendant prayed this Court that he be relieved from making a deposit of the rentals therefor, which motion was opposed by appellant. We find merit in defendant's argument. Rule 72 of the Rules of Court requiring the occupant of the property, where the decision is adverse to him, to make a deposit of the rentals adjudged by the court, contemplates

of instances when defendant is still in possession of the property subject of the litigation, the purpose being to compensate the owner for having been deprived of such possession of his premises. Otherwise, the reason behind such deposit ceases. To require defendant to continue depositing in Court the rentals for the use of the property, when he is no longer in occupancy of the same, does not only run counter to the spirit behind the law but is also highly unfair and unreasonable.

WHEREFORE, and on the strength of the foregoing considerations, the decision appealed from is hereby affirmed, with the understanding that the payment of the rental that defendant should make for the occupancy of part of Lot No. 1 shall be up to the date of the demolition of the building erected thereon. With costs against appellant.

IT IS SO ORDERED.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 18735-R. August 30, 1958]

IN THE MATTER OF THE INTESTATE ESTATE OF THE DECEASED JOSE CARAGAO. ROBUSTIANO CARAGAO, petitioner and appellee, *vs.* LAUREANA CARAGAO, oppositor and appellant.

MARRIAGE; ART. 69, CIVIL CODE OF 1889, NOT REPEALED BY GENERAL ORDERS NOS. 68 and 70.—Article 69 of the Civil Code of 1889 and its precursor, Partida 4, title 13, Law 1 of the Siete Partidas, were not repealed by General Orders Nos. 68 and 70. The Supreme Court in many cases applied the provisions of Article 69 of the Civil Code, and sometimes the Siete Partidas, to marriages that were celebrated after 1899. Accordingly, a child born in 1909 of a bigamous marriage contracted in 1907, is a legitimate child entitled to rights of inheritance.

APPEAL from a judgment of the Court of First Instance of Davao. Fernan, *J.*

The facts are stated in the opinion of the Court.

Rodolfo Palma and *Proculo B. Fuentes*, for oppositor and appellant.

Sotero H. Laurel and *Ezequiel S. Consulta*, for petitioner and appellee.

ANGELES, *J.:*

On January 10, 1947, Robustiano Caragao commenced Special Proceeding No. 60, in the Court of First Instance of Davao, petitioning that he be appointed administrator of the intestate estate of the deceased Jose Caragao, on the ground that he is the nephew and, aside from Carlota Caceres, the only surviving heir left by the deceased.

Three days after the filing of his petition, or on January 13, 1947, Robustiano Caragao adjudicated unto himself, under Section 1, Rule 74 of the Rules of Court, all the properties of the deceased. In his affidavit of extrajudicial self-adjudication, he declared under oath that "Jose Caragao died single, left no children, legitimate or acknowledged natural, or parents nor other relatives except Robustiano Caragao, the affiant herein." On June 3, 1948, he caused the cancellation of Original Certificates of Title Nos. 331, 603 and 2715, standing in the name of the deceased covering the properties adjudicated unto himself, and then secured the issuance in his name of Transfer Certificates of Title Nos. 206, 207 and 208 of the said properties. On the same day, June 3, 1948, Robustiano Caragao sold the parcel of land covered by Transfer Certificate of Title No. 206 to Isabel Garcia Hernandez. Two

days thereafter, he sold the other two parcels covered by Transfer Certificates of Title Nos. 207 and 208 to Josefa Caragao and Gorgonia Jayme, respectively.

The filing of the affidavit of extrajudicial adjudication of property with the Register of Deeds of Davao, the cancellation of the original certificates of title, and the sale of the lands to the persons aforementioned, were all done without the approval of the Court wherein Special Proceeding No. 60 was then pending.

On September 6, 1948, appellant Laureana Caragao filed a motion in Special Proceeding No. 60, alleging that she is the "daughter of the deceased Jose Caragao begotten with one Catalina Baligya (Mora) with whom the said deceased was married under the Moro rites and custom"; and that the adjudication of the estate of Jose Caragao by and to Robustiano Caragao and the subsequent conveyance thereof to third persons were all in fraud of her right as the legitimate daughter and heir of the deceased. Upon her prayer in the motion, the Court appointed a special administrator on September 24, 1948 to commence suits against Robustiano Caragao and his transferees so that the extrajudicial adjudication may be annulled and the properties conveyed may be recovered.

In due time, the appointed administrator filed Civil Case No. 288 of the Court of First Instance of Davao against Robustiano Caragao and his vendees. After trial, the Court held that the deceased Jose Caragao was survived by his daughter, Laureana Caragao, and that, as a consequence, the summary adjudication of his estate in favor of Robustiano Caragao was void, and rendered judgment "ordering the Register of Deeds to cancel Transfer Certificates of Title Nos. 206, 207 and 209 in the name of Robustiano Caragao and in lieu thereof to issue new Transfer Certificates of Title in the name of Jose Caragao; ordering the defendants (vendees of Robustiano Caragao) to vacate the lands in question and to pay the plaintiff the sum of ₱6,000.00, as share of the estate of Jose Caragao; and to pay the costs of this proceeding."

The defendants in Civil Case No. 288 appealed to the Court of Appeals where the case was docketed as CA–G. R. No. 8270–R. Without deciding the question of whether or not Jose Caragao and Catalina Baligya were legally married, and whether Laureana Caragao is a legitimate or an illegitimate daughter, leaving that question for decision by the probate court in Special Proceeding No. 60 at the opportune time, this Court found that Laureana Caragao is the daughter of Jose Caragao and Catalina Baligya and held that under Rule 74 of the Rules of Court, "It is, therefore, beyond question that the adjudication made unto himself by Robustiano Caragao is

void in view of the fact that Jose Caragao was survived by a daughter and, as a result the sales made by him must also fall." On the question of appellant's liability for damages, this Court held that Robustiano Caragao is liable because he "knew Laureana and knew furthermore that she claimed to be the daughter of the deceased Jose Caragao" and that "His co-appellants (the vendees) likewise are barred from claiming good faith because of the lien existing on the properties they had purchased. Their liability for damages is therefore clear and inescapable."

Upon a motion for reconsideration filed by Robustiano Caragao, this Court promulgated a resolution on January 13, 1955 wherein it was reiterated that the only question passed upon in CA–G.R. No. 8270–R, promulgated on March 8, 1954, was whether or not Laureana Caragao is the daughter of Jose Caragao and Catalina Baligya. In the resolution, the finding of this Court that Laureana Caragao is the daughter of Jose Caragao and Catalina Baligya was maintained, but the liability for damages of the vendees of Robustiano Caragao was set aside.

On May 26, 1956, the co-defendants of Robustiano Caragao in Civil Case No. 288, Isabel Garcia Hernandez, Josefa Caragao and Gorgonia Jayme, filed with the probate court in Special Proceeding No. 60 a "Moción Pidiendo Señalamiento de Vista" for the purpose of determining the legitimacy or illegitimacy of Laureana Caragao. The administrator objected to the motion and filed a motion to dismiss Special Proceeding No. 60 on the ground that Robustiano Caragao, the real party in interest, had died and that, therefore, there was no more petitioner in said special proceedings; and that the movants in the "Mocion Pidiendo Señalamiento de Vista" were not the real parties in interest in Special Proceeding No. 60. The motion to dismiss filed by the administrator was denied on the ground that the questions of whether or not Jose Caragao and Catalina Baligya were legally married, and who are the legitimate heirs of the deceased Jose Caragao, have not been resolved by the Court of Appeals in CA–G. R. No. 8270–R. Hence, the trial proceeded.

Substantially, the evidence for the oppositor Laureana Caragao tends to show that Jose Caragao, a Visayan, and Catalina Baligya, a Mora, were married in Davao in 1907 in accordance with the Mohammedan rites and customs; that after the marriage they lived together in one house at Camansi, Mati, Davao; that a child who was later on known to be Laureana Caragao was born to them; that Jose Caragao and Catalina Baligya treated Laureana Caragao as their child, and the latter in turn

treated the former as her parents, Laureana Caragao calling Jose Caragao as "Itay" and Catalina Baligya as "Inay", while Jose and Catalina called Laureana as "Anak".

In substance, the evidence for the petitioner Robustiano Caragao tends to show that prior to 1896 one Emilia Inaquit was living in the house of Flora Bagay and her son Antonino Bagay and working there as maid; that in 1896 Emilia Inaquit married Jose Caragao according to the Roman Catholic rites; that in the marriage Manuel Garcia and Flora Bagay stood as sponsors; that after the marriage Emilia Inaquit adopted the surname of her godmother, and she became known thereafter as Emilia Bagay; that no child was born of the marriage between Jose Caragao and Emilia Bagay; that Emilia Bagay died in 1926.

The lower court found that "it has not been clearly established that Jose Caragao was legally married to Catalina Baligya, although the preponderance of evidence points to the fact that Laureana Caragao is the daughter of Jose Caragao and Catalina Baligya without a benefit of marriage." The trial court stated that "If there was ever such a marriage by Jose Caragao with Catalina Baligya, the same could be considered as void *ab initio* because it was contracted during the existence of the first marriage solemnized in 1896 without this marriage being dissolved in accordance with law. * * * Laureana Caragao may be considered as an illegitimate child of Jose Caragao and Catalina Baligya, not having the status of a natural child." It was held that Laureana Caragao was not entitled under the law then in force to inherit from Jose Caragao, and as "It appeared from the records of the case that Robustiano Caragao is the sole nearest relative of Jose Caragao within the sixth degree," he alone is entitled to inherit the properties of Jose Caragao, "and that the conveyance of the properties originally owned by Jose Caragao made by Robustiano Caragao in favor of Isabel Garcia, Josefa Caragao and Gorgonia Jayme is hereby declared valid and legal * * *".

The foregoing decision is the subject of the present appeal. Two questions are raised by the four assignment of errors listed in appellant's brief. (1) Were Jose Caragao and Catalina Baligya legally married? (2) What is the legal status of Laureana Caragao and what are her successional rights with respect to the estate of the deceased Jose Caragao?

Upon the evidence, both oral and documentary, We are convinced that the following facts have been established: (a) The marriage of Jose Caragao and Catalina Baligya in 1907; (b) The marriage of Jose Caragao and Emilia

Bagay in 1896; (c) the birth of Laureana Caragao in 1909; (d) The death of Emilia Bagay in 1926; (e) The death of Jose Caragao in 1946.

Arapon Bujang Pandita testified that he became a Mohammedan priest after the death of his father in 1930; that his father Codiang Bujang, was also a Mohammedan priest; that his grandfather, Iman Manarantang, was also a Moro priest; that when Iman Manarantang died he left three books to his son Codiang; that when Codiang died in 1930, he in turn left the three books to his son, Arapon Bujang; that the three books are the Koran (Exh. A), the Porcunan (Exh. B), and the Alipalipan (Exh. C); that the Porcunan contained the records of marriages solemnized by Iman Manarantang and that among said marriages recorded in the Porcunan was that of Jose Caragao and Catalina Baligya in 1907 (Exh. E). Exhibit E was translated by Arapon Bujang as follows:

"In the month of Moharam 1907, Jose Caragao and Catalina Baligya were married by me. They paid P35.00 together with the bathing. (When a Visayan marries an Islam the marriage cannot be solemnized unless the Visayan is bathed.)

(Sgd.) "MANARANTANG IMAN"

"Witnesses:
KASOKAN
CAMBIN BARATUA"

Cambing Baratua testified that he personally knew Jose Caragao before he married Catalina Baligya; that he lived in the house of Jose Caragao at Camansi, Mati, Davao; that he personally knew that Jose Caragao was married to Catalina Baligya whose Mohammedan name was Sadiarat Mora, because he was present during the marriage; that the marriage was solemnized by a Moro priest named Iman Manarantang; that after the marriage of Jose Caragao and Catalina Baligya, they lived together in the same house, and Laureana Caragao was born to them.

Juanito Lupangco was presented by the oppositor as one of her witnesses, and he tried to corroborate the testimony of other witnesses. A reading of the transcript, however, convinces us that this witness is not worthy of credence, and we feel that it is not necessary to relate his testimony.

Exhibit E, the document in which the fact of marriage between Jose Caragao and Catalina Baligya is embodied, is bitterly assailed in the brief of Robustiano Caragao's vendees. It is urged that this exhibit should be excluded because it was not properly identified during the trial. The same objection was interposed at the time of the formal offer of exhibits, but the lower court admitted it as part of the testimony of the witness. In our opinion, lack of proper identification of Exhibit E will not make it inad-

missible in evidence, because it was executed in 1907 and may, therefore, be considered as an ancient document. The able argument of counsel for the vendees notwithstanding, we are of the belief that Exhibit E is not blemished by circumstances of suspicion. Nor can we take the testimony of witness Darayao Lazaro to discredit the character of Exhibit E as an ancient document, for his testimony does not impress us.

The testimonies of witnesses Arapon Bujang Pandita and Cambing Baratua were subjected to a microscopic analysis by the vendees-appellees and we are urged to disregard them on grounds of contradictions and improbabilities. True, that the declarations of these witnesses, like that of any other witness, are not entirely free from inconsistencies, but on the whole they establish the fact of marriage between Jose Caragao and Catalina Baligya. Discrepancies in the declarations of witnesses should not serve to lessen their probative value. Inconsistencies in the testimonies of witnesses should be taken in stride as a common and inevitable occurrence, and it is where the declarations tally in all details that they should be disregarded.

The evidence for Laureana Caragao that her parents Jose Caragao and Catalina Baligya lived together as husband and wife has not been contradicted. At least, there is nothing in the record to overcome it. The proof of how the marriage was performed may not be complete in all its minutest details, but if account is taken of the presumption that a man would commit no wrong, that where a man and a woman live together, the law would impress marriage rather than fornication on such relationship, then the claim that Jose Caragao and Catalina Baligya were in fact married cannot be seriously doubted.

On the other hand, appellant impugns the marriage between Jose Caragao and Emilia Bagay in 1896. The record, however, is replete with evidence to establish this fact. Exhibit 2 amply demonstrates that Jose Caragao married Emilia Bagay in 1896. There are other documents like Exhibits 4 and 5 in which it is stated that Emilia Bagay is the spouse of Jose Caragao. And then there is the testimony of Antonino Bagay that Jose Caragao and Emilia Bagay were married and that Manuel Garcia and Flora Bagay stood as sponsors in the wedding. Taking the evidence as a whole, we are persuaded that the two marriages were celebrated and both existed.

These established facts lead us to the consideration of another proposition. Jose Caragao and Emilia Bagay were married in 1896. Jose Caragao and Catalina Baligya were married in 1907. Evidence that Emilia Bagay died in 1926 has not been contradicted. There is no proof that when Jose Caragao and Catalina Baligya married

each other in 1907, the first marriage solemnized in 1896 had already been dissolved. In all probability, the first marriage subsisted until 1926 when Emilia Bagay died. What is the status in law of the second marriage?

Under General Orders No. 68, as amended by General Orders No. 70, the law governing marriage in 1907, it is provided:

"SEC. III. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

"1. The former marriage has been annulled or dissolved.

"2. Unless such former husband or wife was absent, and not known to such person to be living for the space of seven successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal."

There is no question that under the aforecited provisions of law, the marriage between Jose Caragao and Catalina Baligya was null and void. Appellant insists that it was error for the lower court to hold that the marriage of Jose Caragao to Emilia Inaquit on March 3, 1896, was still existing at the time of the marriage between Jose Caragao and Catalina Baligya in 1907. It is contended that there is no proof to show that Jose Caragao who married Emilia Bagay in 1896 was the same Jose Caragao who contracted marriage with Catalina Baligya in 1907; and that there is no evidence that the Emilia Bagay who died in 1926 was the same Emilia Inaquit who married Jose Caragao in 1896. The efforts of the appellant in this direction are overcome by the evidence on record. From the testimony of all the witnesses who testified at the trial of this case, it can be gathered that there was only one Jose Caragao and only one Emilia Bagay spoken of. Besides, even the very witnesses for the appellant admitted that Emilia Bagay lived with Jose Caragao (t.s.n., pp. 9–11, Laureana, Session of July 27, 1955; p. 13, Baratua, Session of July 27, 1955).

The lower court held that even assuming that there was a marriage between Jose Caragao and Catalina Baligya, because such marriage was null and void, the issue, Laureana Caragao, must be considered as illegitimate without any successional rights. Appellant Laureana Caragao maintains that even if the marriage is void from the very beginning, she can be considered as a legitimate child. In support of her contention, she cites the Siete Partidas.

The status of Laureana Caragao must be determined by the law in force at the time of her birth. She testified

in 1955 that she was 46 years old. By simple computation, she must have been born in 1909. In the year of her birth, the Civil Code of Spain was already effective in the Philippines. It took effect here on December 8, 1889. Under Article 69 of the Code of Spain it was provided:

"Marriage contracted in good faith produces civil effects, even though it be declared void.

"If there was good faith on the part of one of the spouses only, it produces civil effects only in respect to him and to the children.

"Good faith is presumed if the contrary is not shown.

"If there was bad faith on the part of both spouses, the marriage shall produce civil effects only in respect to the children."

Said Article formed part of the law of marriage contained in the Civil Code of 1889. Was it impliedly revoked by General Orders No. 68 and No. 70? The latter provided as follows:

"GENERAL ORDERS No. 68"

As amended by G. O. No. 70

"Office of the United States Military Governor
in the Philippine Islands.
"Manila, P. I., December 18, 1899.

"The following provisions respecting marriage shall be in force in these Islands from and after this date.

"All laws and provisions, general and particular, and even those customary, *which are in conflict with this order, are hereby revoked.*"

This Court is inclined to believe that Article 69 and its precursor, Partida 4, title 13, Law 1 of the Siete Partidas, were not repealed by said General Orders Nos. 68 and 70. The Supreme Court in many cases applied the provisions of Article 69 of the Civil Code, and sometimes the Siete Partidas, to marriages that were celebrated after 1899. And in U.S. *vs.* Mata, 18 Phil. 490, the Supreme Court even went to the extent of stating that:

"Keeping in mind the conditions under which this order (No. 68) was published, and the objects which were sought to be obtained by its provisions, we are of opinion that it was not intend to have the effect, and that it did not have the effect of abrogating those just and humane provisions of the Spanish law which secure to the innocent party to a bigamous marriage certain rights in the communal property acquired during the existence of the bigamous relations, and which legitimate the offspring of such unions and recognize the right of inheritance of such offspring from the offending spouse. The bigamous marriage, as a marriage, is declared to be illegal and void from the beginning, but this provision is not necessarily in conflict with those statutory provisions of the Spanish law which prescribe the status of the children resulting from the bigamous relations of the party, or the rights of property arising, not as a result of the bigamous marriage but of the communal relations existing thereafter between the parties."

In the case of Lao and Lao *vs.* Dee Tim, 45 Phil. 739, the Supreme Court applied Law 1, title 13, partida 4

and Article 69 of the Civil Code to a marriage solemnized on June 24, 1903, and went on stating:

"Under the foregoing facts, how must the property of Yap Siong be divided between the two families? Under the *Leyes de Partidas* (Law 1, title 13, partida 4), where two women innocently and in good faith are legally united in holy matrimony to the same man, their children born will be regarded as legitimate children and each family will be entitled to one-half of the estate of the husband upon distribution of his estate. That provision of the *Leyes de Partidas* is a very humane and wise law. It justly protects those who innocently have entered into the solemn relation of marriage and their descendants. The good faith of all the parties will be presumed until the contrary is positively proved." (Article 69, Civil Code; Las Leyes de Matrimonio, seccion 96; Gaines *vs.* Hennen, 65 U.S., 553.)

In Emilia Francisco et al. *vs.* Antonina Jason, et als., 60 Phil. 442, the Supreme Court upheld the right of Antonina Jason who married Benito Marcelo on December 31, 1906, despite the existence of a prior marriage, on the strength of Article 69 of the Civil Code of Spain. Said the Court:

"According to the above quoted article 69 of the Civil Code, a marriage contracted in good faith, although it may be declared void, produces civil effects, among them being the formation of the conjugal partnership and the legitimacy of the children born during the same and before it is declared void. Hence, from the time Benito Marcelo and Antonina Jason were married on December 31, 1906, until June 3, 1929, when the former died, all the property which both acquired by their industry and at the expense of the common fund, the fruits of the paraphernal property of either of them and those of the partnership property, belong to said conjugal partnership."

In Florentino Pisalbon et al., *vs.* Placida Bejec, 74 Phil. 88, the Supreme Court applied the Lao and Lao *vs.* Dee Tim doctrine to a marriage celebrated on November 9, 1914.

The case now turns upon the question of whether or not the presumption of good faith in favor of the marriage between Jose Caragao and Catalina Baligya has been overthrown by the evidence. Robustiano Caragao relies upon the very evidence of appellant Laureana Caragao to overcome the presumption of good faith. On cross-examination, Laureana Caragao testified as follows:

"Q. Is it not a fact that when you were living with Jose Caragao in Camansi there was a woman there in the house living also in the same house by the name of Emilia Bagay when you were still a child?

* * *

"A. There was.

"Q. Do you know where this Emilia Bagay is now?

"A. She is already dead.

"Q. She died when you were about 12 or 15 years old, is that not a fact?

"A. I do not remember.

"Q. Can you remember how old were you more or less when Emilia Bagay died?

"A. I cannot remember now.

"Q. But you had already reached the age of reason?

"A. I have a little sense.

"Q. And Emilia Bagay died in the house of Jose Caragao?

"A. I do not know whether she died there.

"Q. Did you not mention something here 'iya mang bana', referring to Jose Caragao?

"A. I don't know whether Emilia Bagay is his wife.

"Q. Do you remember having testified in Civil Case No. 288?

* * *

"A. I have known that Jose Caragao was the husband of Emilia Bagay but I am not very sure."

In Exhibit 8, the following testimony given by Laureana Caragao in Civil Case No. 288 appear:

"A. It was my mother who told me that Jose Caragao had wife by the name of Emilia.

"Q. Usted recuerda haber visto a Emilia personalmente?

"A. I know her but I did not talk to her because I was small at that time; it was only my mother who told me that Emilia is the wife of Jose Caragao.

"Q. Donde vivia Emilia entonces?

"A. At Camansi.

"Q. En la misma casa de Jose Caragao?

"A. Yes, sir, in the very house of Jose Caragao because she was the wife.

The foregoing testimony while showing that there was knowledge on the part of Laureana Caragao that Emilia Bagay had been the wife of Jose Caragao, and while admitting that her mother knew that Emilia Bagay was the wife of Jose Caragao, does not show that Catalina Baligya knew in 1907, when the marriage between her and Jose Caragao was celebrated, that the latter had a wife in the person of Emilia Bagay. Nor does the testimony disclose that such knowledge had been brought home to Catalina Baligya before the conception or birth of Laureana Caragao. In our opinion, the foregoing declaration is not sufficient to overcome the presumption of good faith on the part of Catalina Baligya when she contracted marriage in 1907 with Jose Caragao. It results that with the jurisprudence cited, Laureana Caragao must be considered as a legitimate child.

There is no question that as such legitimate child of Jose Caragao she can inherit the entire properties of her father to the exclusion of Robustiano Caragao who is only a nephew.

WHEREFORE, the judgment appealed from is reversed. Appellant Laureana Caragao is hereby declared as the

sole heir of Jose Caragao and entitled to the latter's estate. The pronouncement of this Court in CA–G.R. No. 8270–R to the effect that the summary adjudication by Robustiano Caragao and the subsequent sales of the properties to three vendees, namely, Isabel Garcia Hernandez, Josefa Caragao and Gorgonia Jayme, are void, is hereby reiterated, with costs.

IT IS SO ORDERED.

Natividad and *Angeles, JJ.*, concur.

Judgment reversed.

[No. 19386-R. August 30, 1958]

THE DIRECTOR OF LANDS, applicant and appellee, *vs.* ASOCIACION BENEVOLA DE CHINOS, petitioner and appellant; LOPE TUERO, ET ALS., oppositors and appellees.

RECONSTITUTION; RECONSTITUTION OF CERTIFICATES OF TITLE; SOURCES OF RECONSTITUTION OF CERTIFICATES OF TITLE.—Reconstitution of certificates of title literally and within the meaning of Republic Act No. 26, denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. (Zafra Vda. de Anciano *vs.* Caballes, Vol. 49, Official Gazette p. 4317, October 1953) The purpose of the reconstitution of any document, book or record is to have the same reproduced, after observing the procedure prescribed by law, in the same form they were when the loss or destruction occurred. (Government of the Philippine Islands *vs.* Abada, 48 Official Gazette, 4, p. 1372, April, 1952) Reconstituted certificates of title shall have the same validity and legal effect as the originals thereof. (Section 7, Republic Act No. 26) Republic Act No. 26 enumerates under Sections 2 and 3 thereof the sources from which an original certificate of title or a transfer certificate of title may be reconstituted.

APPEAL from a judgment of the Court of First Instance of Cebu. Piccio, *J.*

The facts are stated in the opinion of the Court.

Nazario R. Pacquiao and *Nicolas Jumapao*, for petitioner and appellant.

Ramon Duterte, Cecilio Gillamac, Antolin Rubillos, Gaudioso Montecillo & Arnulfo Bernardo, for oppositors and appellees.

ANGELES, *J.:*

A petition for reconstitution of a certificate of title was filed by the Asociación Benevola de Chinos, on January 17, 1949, before the Court of First Instance of Cebu, wherein it is alleged, amongst others:

"2. That the petitioner is the sole owner of a parcel of land of the Banilad Friar Lands Estate, situated in the City of Cebu, Philippines, and more particularly denominated as Lot No. 108, with an area of 52,110 square meters, more or less;

"3. That the names and addresses of the adjoining owners are as follows: On the north, by the Provincial Road; on the east, by a creek; on the south, by the Cebu Bay; and on the west, by Lot No. 109, Banilad Estate;

"4. That said Lot No. 108 was purchased by the Asociacion Benevola de Chinos for charitable purposes, for use of the Chinese Hospital and Cemetery, and as a matter of fact, said lot and improvements introduced thereon, are, for more than 25 years devoted for the use of the hospital and cemetery of said corporation;

* * * * * * *

"6. That said Lot No. 108 was registered free of liens and incumbrances under the name of the Asociacion Benevola de Chinos

but that, the certificate of torrens title issued thereunder together with other documents appurtenant thereto, were lost and/or destroyed during the war;"

On June 15, 1949, more than 9 persons registered opposition to the petition for reconstitution, alleging, among other things:

"1. That they (oppositors) are actual occupants of Lot No. 108 of the Banilad Friar Lands Estate.

"2. That they had been occupants of said lot for more than twenty years up to the present time.

"3. That the herein petitioner is also an occupant of a portion of said lot.

"4. That the said lot has never been registered and no certificate of title was issued in the name of the petitioner the 'Asociacion Benevola de Chinos', which is a foreign association composed of aliens.

"5. That the said lot was originally registered in the name of 'Compania Agricola de Ultramar' in accordance with the records of the Bureau of Lands."

On September 8, 1950, an amended opposition was filed in court. Forty persons were listed therein as oppositors. The allegations in the original opposition were reiterated, and the oppositors averred, in addition, that their predecessors in interest were occupants of the lot in question from time immemorial; that the lot is owned by and registered in the name of the Government, but it was reserved for the 'Compañía Agrícola de Ultramar'.

Tomas Liao Lamco testified for the petitioner that he was one of the founders of the Asociación Benevola de Chinos in 1909; that in the same year the association purchased from one Isidro Gavelando, Lot No. 108; that the purchase thereof was evidenced by a deed of sale, which document was burned during the last war; that the land is situated in Gareta, Cebu City and bounded on the North by the Provincial Road, on the East by a creek, on the South by the seashore of Cebu, and on the West by Lot No. 109; that the association bought Lot No. 108 for hospital and cemetery sites; that the association actually built a hospital on the lot; that on account of the destruction of the hospital, the association recovered damages from the War Damage Commission; that aside from the document of purchase and sale, there was a certificate of torrens title to show the ownership by the petitioner of the lot in question; that he can not remember when the torrens title was acquired by the association; that when the lot was purchased from Isidro Gavelando in 1909, there was no certificate of title; that it was the association who applied for the issuance of the certificate of torrens title; that he can not remember when the application for the issuance of title was filed; that the association possessed the torrens title for fifteen years, more or

less, before the outbreak of the war; that the title was in the custody of the treasurer of the association and kept inside the safe of the hospital; that the title on Lot No. 108 was issued in the name of the Asociación Benevola de Chinos; that he saw the title for the last time in 1942 in the hospital; that the title was burnt or destroyed in the hospital during the war. On cross-examination, he declared that he does not know who appeared for the association when it filed application for the issuance of title; that the original deed of sale signed by Isidro Gavelando was attached to the records of the proceedings for the issuance of the certificate of title; that he can not remember the exact year when the title was issued; that the hospital and cemetery do not occupy the entire area of Lot No. 108; that at the time Lot No. 108 was purchased in 1909, there were many persons who were already occupying the land; that until now the association has not possessed that portion which has been occupied by more than fifty families; that these occupants are not paying rentals but are giving contributions to the hospital; that he was not present when the deed of sale was executed by Isidro Gavelando in favor of the association; neither did he see such execution, but he learned of the purchase only from the minutes of the meeting of the association.

Felix Go Chan testified that he became the secretary-treasurer of the association in March, 1941, and held that position for one year after that date; that during his incumbency, he was the custodian of the records of the association; that the office of the association in the hospital is erected on Lot No. 108; that aside from the hospital there was a cemetery on said lot; that the lot has been used as a cemetery by the Chinese residents of Cebu City even before 1910; that he knew for a fact that a title has been issued in the name of the association because he was the former secretary thereof; that the association's claim of ownership over Lot No. 108 is based upon the fact that it had incurred expenses for improvements amounting to above ₱40,000.00 for the construction of the hospital and other expenses for the fence and the cemetery; that there was a torrens title evidencing ownership of Lot 108 by the association; that the title was issued in the name of the association; that while he was the secretary-treasurer of the association in 1941, the title was placed inside the safe in the hospital; that after the war the title was no more; neither did they find the original torrens title in the office of the Register of Deeds of Cebu because almost all the records of that office were lost or destroyed; that he can say that the title which was in his possession was also lost because the safe where the title was kept disappeared after the declaration of

war between the United States and Japan, when the people were evacuating from the city. On cross-examination, he declared that he saw the title; that he remembers very well the contents thereof; that he does not remember whether it was an original certificate of title or a transfer certificate of title; that he remembers that it was a title for Lot 108; that he does not remember when and from whom the lot was acquired; that he only remembers that there was a title, but he does not remember if there were other documents pertaining to the lot in question; that he has been a member of the association since its beginning; that he remembers that the association purchased lot 108; that the persons living on that lot were paying rentals but when he became a member of the board of directors he suggested that the poor people living there should not be required to pay rentals; that as resident of Cebu City he knows that even in the year 1910 a portion of the lot in question was already occupied by private persons; that the occupants of that portion of the lot were either the present oppositors or their predecessors in interest; that besides the hospital and the cemetery, the association has constructed no other building or introduced no other improvements on the lot from 1910 until the time of the trial.

Ex-Senate President Mariano Jesus Cuenco, attorney of record of the petitioner Asociación Benevola de Chinos, testified that he knew Lot No. 108; that in 1910 the Asociación Benevola de Chinos was in possession of that lot; that as far as he can recollect he was the attorney of the Compañía Agrícola de Ultramar probably from the year 1919 or 1920 until sometime before his election as Governor of Cebu in 1928; that sometime between 1920 and 1925 he was in the office of the Bureau of Lands, and an agent called his attention to the fact that in a certain plan that the Bureau had, the Compañía Agrícola de Ultramar appeared as owner of the lot used and possessed by the Asociación Benevola de Chinos; that he requested the President of the Association if they have some title which would prove their ownership over the property in question, and if his memory does not fail him it was Mr. Unchuan, President of the association, who showed him the title of this lot; that the title was signed by Maximino Mina, former provincial fiscal of Cebu and Register of Deeds ex-oficio; that the title was in the name of the association; that he saw the title probably in 1920 or 1921. On cross-examination, he declared that in 1916 or before that year, the cadastral proceedings in Cebu was began, and the association who had one whole title in the cadastral case succeeded in changing the title, because the association filed an ap-

plication in order that the title which was formerly issued may be ratified by the cadastral court; that he saw the title but does not remember its contents; that he is not sure whether it was an original certificate of title or a transfer certificate of title; that it was Mr. Unchuan who told him that the title which he saw was the title to the land.

Submitted as documentary evidence are photographs of the ruins of the hospital (Exhs. A, B and C), the War Damage Claims application (Exh. D), the relocation plan of Lot No. 108 prepared and based on the survey made by E. Bunagan on May 20 and August 16, 1947. (Exh. F) also submitted were Tax Declaration No. 24732–R in the name of Asociación Benevola de Chinos of a parcel of urban land containing an area of 52,110 square meters, bounded on the North by Provincial Road, on the South by Cebu Bay, on the East by a creek, and on the West by Lot No. 109, B. Estate (Exh. G), where it is stated that tax under the declaration begins in 1948; Tax Declaration No. 11658 of Engracia Bolabola, one of the oppositors, of a residential house described as "House on the land of the Asociación Benevola de los Chinos" (Exh. L), and Tax Declaration No. 5405 in the name of oppositor Gerardo Tabar describing the property therein declared as "Residence on the land of the Chinese Hospital with old G. I. Roof"; and pictures of the hospital and the cemetery (Exhs. N, N–1 to N–6).

Isabel Tablada, 68 years old in 1951, testified that she is one of the oppositors; that she knew Isidro Gabelando; that Isidro Debelando died in 1901, four months before the arrival of the Americans in Cebu; that Isidro Develando who was a Spaniard was killed by the Revolutionary soldiers at about six o'clock in the evening; that Isidro Develando never lived in the lot where the Chinese hospital and cemetery were located; that nobody collected rentals from her as occupant of a portion of Lot 108; that when they are treated in the Chinese hospital, they give contributions.

Florencio S. Urot testified that he has a house in Lot 108; that he has lived in that lot since 1931; that aside from him there are about 75 families with their houses in Lot 108; that his present house was constructed in 1941; that the former Chinese hospital was just behind his present house; that when he constructed his house in 1941, the *encarcado* of the Chinese hospital tried to stop him from his work, reasoning that the land belongs to the association of the Chinese; that he asked from the members of the association their title to the lot, but after the lapse of one week, they failed to show any title;

that he went to the office of the Register of Deeds to verify whether the association has its title there, and he found that there was none; that he went to the Banilad Friar Lands Estate office and there he discovered that there was an annotation on the page alloted for Lot 108, consisting of a letter from the Director of Lands which indicated that Lot 108 of the Banilad Friar Lands Estate was reserved for the Compañía Agrícola de Ultramar; that when he went to the office of the Register of Deeds it was August or September, 1941; that as an actual occupant of a portion of Lot 108 since 1931, he has been paying taxes on the land and he requested a tax declaration for it in 1948.

Claudio Reyla testified that he was born in 1880; that he is living near the Chinese cemetery in Careta; that he had lived there since the time of his parents; that he knew a person by the name of Isidro de Binondo, a Spaniard who was killed a long time ago; that on April 3, 1898, the first revolt against Spain in Cebu, Isidro de Binondo was still living; that it did not take a week after "Tres de Abril" that Isidro de Binondo was killed by the *insurrectos;* that he saw the dead body of de Binondo in the latter's house; that the residents of Lot 108 never gave contributions to the hospital; that they did not pay any rentals to the association.

Engracia B. Urot testified that she knows lot 108, the Chinese hospital and the cemetery; that the hospital and cemetery occupy only one-fourth of Lot 108; that 3/4 of the Lot is occupied by other persons; that since 1901 she has been an occupant of a portion of lot 108; that her parents also occupied a portion of said lot; that from 1932 up to the outbreak of the war she worked as a nurse in the hospital of the association; that there was a safe in the hospital; that said safe is now in the basement floor of her house because less than a month after the Americans came to Cebu on May 7, 1945, Mr. Tomas Liao Lamco asked her permission to have the safe deposited in her house; that prior to the war that safe was placed in the patient's ward of the Chinese hospital; that even before the war the safe was already out of order, and it was used merely as a container of *papel de estraza* for the patients; that it is not true that the certificate of title of Lot 108 was deposited in that safe; that aside from the safe used as container of tissue paper, there was no other safe in the Chinese hospital.

The oppositors presented in evidence the letter of the Director of Lands (Exh. 1) and Tax Declarations in the name of Engracia Urot (Exhs. 2, 2–a and 2–b). Exhibit 1 is copied hereinbelow verbatim.

"Manila.

"December 28, 1929

"The Friar Lands Agent
Agency No. 5, Bu. of Lands
Talisay, Cebu

"SIR:

"With reference to your letter dated December 18, 1929, I wish to inform you that the records of this Office show that lots 108 and 112, Banilad Estate, were reserved for the Compañía Agricola de Ultramar and therefore, said lots are private lands.

"Very respectfully,

SERAFIN P. HILADO
Director of Lands

"By: "JUAN MA. DELGADO
Chief, Friar Lands Division"

Antonio Unchuan testified on rebuttal that he was the doctor at the Chong Hua Hospital (hospital of the petitioner) prior to the war; that he has been connected with the hospital since 1937; that the safe is not placed in the patient's room as testified to by Engracia Urot because the hospital had bedside tables for the patients; that the safe was not used for tissue paper because the hospital had a supply room.

Upon the foregoing evidence, the lower court rendered judgment, the dispositive portion of which is as follows:

"The Court, therefore, while holding as it hereby holds that there was such a torrens title in the name of petitioner (and this has been established by a preponderance of the evidence), would hold in abeyance its reconstitution, pending a definition or determination of the respective rights and extent of the claims—if at all—of the oppositors herein—which possibly may be threshed out in a proper civil action or actions."

From the judgment, the petitioner appealed and assigned two errors in its brief.

"1. The trial court erred in not dismissing the opposition filed by the oppositors in this case.

"2. The trial court erred in holding in abeyance the reconstitution of the title in the name of the petitioner."

It is contended that the existence of a certificate of title to Lot 108 in the name of the petitioner was established beyond doubt; that it would be clearly against the ordinary course of events for the association to make an expenditure of thousands of pesos if it did not own the property; that the tax declarations in the name of Engracia Bolabola (Exh. L) and Genaro Tabar (Exh. M) are admissions that the petitioner owned lot 108.

Reconstitution of certificates of title literally and within the meaning of Republic Act No. 26, denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. (Zafra Vda. de Anciano *vs.* Caballes, Vol. 49, Off. Gaz.,

p. 4317, October 1953.) The purpose of the reconstitution of any document, book or record is to have the same reproduced, after observing the procedure prescribed by law, in the same form they were when the loss or destruction occurred. The reconstitution of certificates of title should be made, as just stated, in the same form and exactly as they were at the time they were lost or destroyed. (Government of the P. I. *vs.* Abada, 48 Off. Gaz., 4, p. 1372, April, 1952.) Reconstituted certificates of title shall have the same validity and legal effect as the originals thereof. (Section 7, Republic Act No. 26.) Republic Act No. 26 enumerates under Sections 2 and 3 thereof the sources from which an original certificate of title or a transfer certificate of title may be reconstituted. Not any one of the documents listed in Republic Act No. 26 was presented by the appellant in evidence. Appellant evidently relies on paragraph (f) of Sections 2 and 3 of Republic Act No. 26 to sustain its petition, which paragraph provides that "any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title" can be made the basis or source for the reconstitution of a certificate of title.

Reviewing the evidence on record, we find that appellant's proof fell far short of the requirement of the law, and there is a dearth of evidence to warrant an order for reconstitution of a certificate of title. It will at once be noticed that not one among the witnesses presented by the appellant, not even Senator Cuenco, could tell whether the title issued to the petitioner was an original certificate of title or a transfer certificate of title. This uncertainty seriously places in doubt the claim that a certificate of title has been issued to the petitioner. And, were we to grant the petition, we would not know for sure if the Register of Deeds should be directed to reconstitute an original certificate of title or a transfer certificate of title. But the most fatal omission in appellant's evidence is the utter lack of any indication as to the scope and extent of the area covered by the certificate of title allegedly lost or destroyed. Tomas Liao Lamco merely gave the actual boundaries of Lot 108; he did not state if those boundaries were contained in the title. Other witnesses stated that the title was issued in the name of the petitioner for the lot in question, but they did not bother to state positively the area covered thereby. And considering that even the witnesses for the appellant admitted that the oppositors and their predecessors in interest have stayed all along and built their houses on a vast portion of the lot in question, without the association demanding rentals from them and the

occupants never paid any rentals to the association, it can hardly be said that the title allegedly issued embraced lot 108 in its entirety. In our opinion, these defects in appellant's evidence are already sufficient to justify the denial of its petition. There are proofs in the record, however, which make us doubt if indeed a certificate of title was issued to petitioner which title was seen by one of the witnesses probably in 1920 or 1921. The letter of the Director of Lands hereinabove quoted shows that as of the year 1929, the lot in question was still reserved for the Compania Agricola de Ultramar. It must be presumed that the Chief of the Bureau of Lands possessed knowledge of all the existing records in his office. And it must be presumed that if a title has been issued to the petitioner prior to 1920 or 1921 records to that effect must be found in the records of the Bureau of Lands. Now then, why did the Director of Lands, in answer to a letter dated December 18, 1929, say that "the records of this Office show that lots 108 and 112, Banilad Estate, were reserved for the Compañía Agrícola de Ultramar . . ."?

The evidence of appellant were directed largely towards proving that it was the owner of the lot in question. The construction of the hospital, the utilization of a portion of lot 108 for cemetery purposes, and the admissions by two of the oppositors in their tax declarations tend to prove that the petitioner was the owner of the lot whereon the hospital and cemetery were located. Proof of such ownership alone, however, is not enough in a petition for reconstitution of title. The existence of the title sought to be restored to its original form and condition prior to its destruction or loss must be indubitably shown.

Nor could the weakness of the oppositors' evidence be relied upon to sustain appellant's stand. In a petition for reconstitution, it is mandatory that the petitioner proves unequivocably the facts that would give the Court reasons to grant the relief prayed for.

By and large, We are convinced that under the facts proven, the petition of appellant can not be granted. We can not dispose of the case, however, without saying a word about the dispositive portion of the judgment appealed from. It decreed that the reconstitution of the title should be held in abeyance until the rights of the petitioner and the oppositors have been settled in a civil action or actions. We believe that the finality of the lower court's judgment is made to depend upon an uncertain and contingent event—that of the petitioner's and opposition's going to court to litigate their respective claims. For ought We know the parties may see fit not to go to

court and the uncertainty of the judgment becomes indefinite.

For the foregoing reasons, and in view of our findings that the evidence of appellant is not sufficient to warrant the reconstitution of the title, the petition is hereby denied, without prejudice to the right of the petitioner to file an application for confirmation of its title under the provisions of the Land Registration Act, as provided for under Section 15 of Republic Act No. 26. With costs against the appellant.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment affirmed.

[No. 21431-R. September 5, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CIPRIANO LANDICHO, accused and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM; INTENTION IMMATERIAL.—It is already well settled in this jurisdiction that illegal possession of firearm being a statutory crime, it is *malum prohibitum*, and intention is immaterial because it is presumed from the mere fact of possession (People *vs.* Uy Kua, 62 Phil. 972). For the criminal liability to arise it is sufficient that the prohibited act is done (People *vs.* Bayona, 61 Phil. 181). Considering, however, the social policy of the government concerning loose firearms, persons collecting said firearms should be allowed temporary and incidental possession thereof for the purpose of surrendering them to the proper authorities.

APPEAL from a judgment of the Court of First Instance of Batangas. Vasquez, *J.*

The facts are stated in the opinion of the Court.

Claro M. Recto and *Antonino de los Reyes*, for accused and appellant.

Assistant Solicitor General Antonio A. Torres and *Solicitor Lauro C. Maiquez*, for plaintiff and appellee.

CABAHUG, *J.:*

This is the appeal of Cipriano Landicho, who, after trial upon a plea of not guilty, was convicted for illegal possession of firearm and sentenced to undergo an indeterminate imprisonment of from five years and one day to five years and six months, and to pay the costs. The firearm, ammunition and magazine were ordered confiscated in favor of the government.

According to the prosecution's evidence, Sgt. Severino Gimeno, Cpl. Ramon Marasigan and Pfc. Nestor Andaleon of the 36th PC Company stationed in Nasugbu, Batangas, armed with a search warrant applied for by Andaleon on February 25, 1956 (Exhibit A–1) and issued on the same date by the Justice of the Peace of Taal (Exhibit A), went to barrio Luntal, Taal, at about 11:00 a.m. of the same day to search the house of appellant, who was reported to be illegally keeping a carbine caliber .30. They were accompanied by two municipal policemen. When they showed the search warrant to appellant and asked him if he really had a firearm, the latter readily surrendered the Thompson submachinegun with its magazine and seven rounds of ammunition (Exhibit B, C, C–1 to C–7). Because he could not produce any license to possess the gun appellant was immediately brought to the municipal building where he was investigated in Tagalog and his declaration taken down by typewriter in the form of questions and answers. Before Justice of the Peace Juan K. Solis, appellant voluntarily swore to the truthfulness of his statements contained in the said affidavit (Exhibit D), wherein

in substance he stated that he was arrested, brought to and investigated at the Taal Police Department by the PC soldiers because he possessed the Thompson submachinegun caliber .45 M1A1, serial number 321619, with one magazine and seven rounds of ammunition, without any license to do so; that he bought the firearm and ammunition for ₱120 on February 24, 1956, from two unknown persons; and that he possessed the gun without authority because of the rampant stealing of livestock in their place and for the protection of his three animals (Exhibit D).

The defense does not deny these facts, but it proved that appellant is a barrio lieutenant, having taken his oath of office on January 20, 1956 (Exhibit A); that as such, he was authorized by Municipal Mayor of Taal Flaviano N. Lota to collect loose firearms in order to help in the early restoration of peace and order in the municipality (Exhibit 3); that in giving said authority, Mayor Lota acted in compliance with the request of PC Provincial commander Lt. Col. Julio R. Narvaez, who assured that the firearms collected would be paid by the government (Exhibit 6), and with the authority issued by the provincial governor of Batangas (Exhibit 4); that at about 6:00 p.m. of February 24, 1956, appellant bought the firearm and ammunition in question for ₱120 from two unknown persons who were accompanied to his house by his brother Moises; that it was appellant's purpose and intention to turn over the firearm to the municipal mayor the following morning; that before he could leave his house on that morning he had to feed his stock, and while he was gathering the feed he was advised that there were PC soldiers looking for him; that when he arrived at his abode, he found the soldiers there, who asked him if he had a gun; that he answered affirmatively and invited them to go upstairs where he immediately delivered the firearm, its magazine and ammunition; that when asked if he had license he really answered in the negative because in truth the authority given him by Mayor Lota was not a license issued by the PC; and that after his investigation in the office of the chief of police, he was brought to the justice of the peace before whom he swore to affidavit Exhibit D.

The only question raised by appellant here is that in the absence of *animus possidendi* on his part, evidenced by his voluntary surrender of the firearm to the PC soldiers, he should not have been convicted.

If the aforesaid question is to be strictly resolved in the light of Philippine jurisprudence, appellant's conviction appears certain for, as correctly contended by appellee, it is already well settled in this jurisdiction that

illegal possession of firearm being a statutory crime, it is *malum prohibitum*, and intention is immaterial because it is presumed from the mere fact of possession (People *vs.* Uy Kua, 62 Phil 972). For the criminal liability to arise it is sufficient that the prohibited act is done (People *vs.* Bayona, 61 Phil. 181). Considering, however, the special circumstances surrounding the case at bar and the social policy of the government concerning loose firearms, to convict and condemn appellant would be to sacrifice substantial justice at the altar of technicality, to sanction official deception and to sabotage the above-mentioned policy.

It is of public knowledge that when the American forces of liberation landed on our shores, they freely distributed guns and ammunition to all persons who remained loyal to the Allies' cause, without investigating or looking into the recipients' qualifications to possess firearms—which would have been done under ordinary and normal conditions. It is likewise known that during the battle for liberation countless guns of all types were scattered over the battlefields, so that all that those who wanted to possess them had to do was practically just to go out and pick them up. And there is no denying that because of the relaxation of the morality of the people, imposed by the hardships of war and the presence of communist-inspired agents, numberless transgressions against the law in which loose firearms and explosives played the principal role, were committed not only in the countrysides, but also in the cities and municipalities during the first years after the declaration of peace. Unfortunately, even now, these transgressions still prevail, albeit in a very much reduced proportion.

Thus, for the purpose of curtailing the rampant criminality which not only wantonly spilled precious blood but also endangered the security of the nation Congress passed Republic Act No. 4 on July 19, 1946, increasing the penalty imposed by section 2692 of the Revised Administrative Code as amended, from not exceeding one year of imprisonment and/or a fine of not more than ₱1,000, to not less than one nor more than five years and or a fine of not less than ₱1,000 nor more than ₱5,000, except when the firearm illegally possessed is a carbine, "greasegun", submachine-gun or other types of heavy weapons in which case the penalty is not less than five nor more than ten years of imprisonment. This increased penalty, however, failed to arrest the wave of criminality committed with loose firearms and explosives. Hence, Congress changed its methods from one of reprisal to one of attraction and approved on June 10, 1950, Republic Act No 482 which authorized any person illegally possessing firearms or ammunition to

surrender the same within one year without incurring any criminal liability but, on the contrary, with the right to receive the value of the arms surrendered in accordance with the prices fixed by the government. To make it more attractive, Republic Act No. 486 was approved on the following day authorizing the surrenderees to procure a permanent license provided they have the qualifications required by existing laws and regulations.

After the expiration of the one year period provided for in Republic Act No. 482, the problem of loose firearms and the consequent criminality remained a vexing one. There were still plenty of loose firearms and the ordinary financial resources of the government were not enough to pay so many surrendered arms. So, on January 7, 1954, the President of the Philippines, upon whose shoulders mainly rest the burden of restoring and maintaining peace and order, created the Peace and Amelioration Fund Commission charged with the task of raising funds from voluntary contributions for the principal purpose of purchasing "loose firearms and such other arms and equipment as can be used to resist the violent elements in accordance with the provisions of Republic Acts Nos. 486 and 482." (Executive Order No. 7, series of 1954.) Aside from this, Congress still continued to appropriate sizable sums in the ensuing fiscal years for the same purpose—an indication that Congress still maintained the policy of attracting illegal holders of firearms by the payment of the value of the surrendered arms (R. A. Nos. 1150, p. 695; 1350, p. 743; 1600, p. 857; 1800, p. 880; and 2080, p. 1471).

The Department of National Defense, which was entrusted with the implementation of the above numbered republic acts, continued to be in charge of the campaign for which purpose the commission was created. Accordingly, pursuant to the department's policy dated July 31, 1954, and Circular No. 121 of the Chief of Staff, AFP, the Chief of Constabulary, assisted by his provincial commanders, intensified the collection of loose firearms. It was in pursuance of this very important policy of the government that Lt. Col. Narvaez wrote Mayor Lota requesting that the latter help in the collection of loose firearms and promising payment therefor; and for the same reason Governor Leviste authorized the mayor to deputize any law abiding and solid citizen of Taal to collect loose firearms "so as to realize the early restoration of peace and order" in the municipality. And it was in compliance with the authority given him by Mayor Lota that appellant bought the submachinegun and ammunition in question for the purpose and with the intention of surrendering them on the following day.

Appellant's character has not been questioned. He is serving the government as a barrio lieutenant without any compensation. He acted the way he did in compliance with the order of his superiors upon the request of the PC Provincial Commander.

The facts established by the defense constituting appellant's exculpation are not disputed by the prosecution. Neither has it rebutted appellant's testimony to the effect that he was misunderstood by his investigators and that what he wanted to convey in answering question 16 of his affidavit was that there being rampant stealing of cattle in his area, he would have used the gun for the protection of his stock had an occasion to do so arisen while the gun was still in his possession prior to its surrender.

We repeat, consequently, that herein appellant's conviction would be tantamount to a sanction of deception, with the government through its above named agencies as the deceiver and appellant as the poor victim of the deception. Appellant, in the instant case, was not only induced but practically ordered to collect loose firearms; and when he complied with the order, in less than twenty-four hours and without giving him the opportunity to surrender the arm to the mayor, he was searched, arrested, charged and convicted. Evidently, such a situation cannot and must not be tolerated. It involves an immoral conduct. Quoting our Honorable Supreme Court in the case of U.S. *vs.* Phelps, 16 Phil. 440, "such conduct is most reprehensible and should be reproved and not encouraged by the courts." Upon the other hand, appellant's conviction under the circumstances hereinabove narrated would be an effective sabotage of the Republic's policy in the collection and purchase of loose firearms; for who would be naive enough to collect and then bring any unlicensed gun to surrender it to the proper authorities if he knows that before he can actually deliver it he would be arrested, charged with illegal possession and convicted under the theory that having committed a statutory crime his *animus possidendi* is immaterial?

The above mentioned social policy was enunciated by the aforecited congressional enactments and executive actions, and it is imposed by the fundamental function of the government to preserve and protect the security of the State from spurious elements who became more defiant and daring because of so many guns which they could readily use. To implement the said policy, it is imperative that the persons collecting and surrendering loose firearms should have temporary and incidental possession thereof, for how can one collect and deliver without temporarily laying his hands on the firearms? It is for this

reason that we believe that the doctrine of the immateriality of *animus possidendi* should be relaxed in a certain way. Otherwise, the avowed purpose of the government's policy cannot be realized. Of course, it would be a different story if it is shown that the possessor has held on to the firearm for an undue length of time when he had all the chances to surrender it to the proper authorities.

FOR THE FOREGOING CONSIDERATIONS, the appealed judgment is hereby reversed with the acquittal of appellant. With costs *de oficio*.

IT IS SO ORDERED.

Dizon and *Peña, JJ.*, concur.

Judgment reversed.

[No. 23501-R. September 13, 1958]

RODOLFO GANZON and ROSENDO MACULADA, petitioners, *vs.* HON. ARSENIO NAÑAWA, Judge of the Court of First Instance of Iloilo, et al., respondents.

1. CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; ACCUSED NOT ENTITLED TO PREVIOUS NOTICE OF PRELIMINARY INVESTIGATION UNDER REPUBLIC ACT NO. 732.—It is not the duty of the provincial fiscal conducting a preliminary investigation under the authority of Republic Act No. 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation (Rodriguez *vs.* Arellano et al., G. R. No. L-8332, April 22, 1955). Nor has the accused any right to demand in a reinvestigation that the witnesses for the prosecution be recalled to be cross-examined (People *vs.* Ramilo, 52 Off. Gaz., No. 3, 1431).
2. ID.; GRANTING OF WITHDRAWAL OF PLEA OF GUILTY, DISCRETIONARY.—The granting of an application to withdraw or set aside a plea is largely discretionary on the part of the judge to whom it is addressed and his action thereon is not subject to review by certiorari unless grave abuse of discretion is shown (U. S. *vs.* Schneer, 7 Phil., 523; U. S. *vs.* Baluyot, 40 Phil., 385).

ORIGINAL ACTION in the Court of Appeals. Certiorari, prohibition and mandamus.

The facts are stated in the opinion of the court.

Divinagracia & Gonzales, for petitioners.

Special Prosecutor Guillermo Romeo and *Private Prosecutor Jose L. Africa,* for respondents.

LANTING, *J.:*

On the grounds that the preliminary investigation of Criminal Case No. 6073 was not conducted in accordance with R. A. 732 in relation to Sec. 64, C. A. 158 (Iloilo City Charter) and that the information charges more than one offense, the defendants in said case, petitioners herein, filed a motion dated July 23, 1958 with the Court of First Instance of Iloilo praying that they be permitted to withdraw their plea, that the information be quashed, and that the City Fiscal be ordered to conduct another investigation in conformity with law.

Judge Arsenio Nañawa of the Court of First Instance of Iloilo, one of respondents herein, denied the motion in an order dated July 26, 1958, which reads:

"Considering that the information in this case was filed on January 21, 1957 and that upon being arraigned on January 4, 1958 both accused assisted by their counsel pleaded not guilty of the crime charged therein, in the light of the provisions of Section 10, Rule 113 of the Rules of Court, the Court finds no merit in the motion to quash and/or for reinvestigation and motion to set aside plea, dated July 23, 1958, filed by the counsel for the accused. Said motion to quash and/or for reinvestigation and motion to set aside plea is therefore DENIED."

A motion for reconsideration having been denied, petitioners filed with this Court this petition for "Certiorari, Prohibition and Mandamus", praying that the above-quoted order be declared null and void; that the Information filed against petitioners be ordered quashed; and that the City Fiscal of Iloilo be ordered to conduct a preliminary investigation in the presence of petitioners and to permit them to cross-examine the witnesses for the prosecution.

The question presented to us is this: Is the respondent judge guilty of grave abuse of discretion in denying the motion above referred to?

The preliminary investigation was conducted by the City Fiscal in the absence of the two accused who were not notified beforehand of such investigation. There is no showing that prior to the investigation they requested for an opportunity to be present thereat.

Petitioners contend that they are entitled under the law to previous notice of the preliminary investigation and to cross-examine the witnesses against them. The pertinent portion of Section 2 of R. A. 732 relied upon by petitioners reads:

"SEC. 2. * * * A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, after due investigation of the facts made in the presence of the accused if the latter so requested shall have presented an information against him in proper form and certified under oath by the said provincial fiscal that he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the later's request . . ."

In the case of Rodriguez *vs.* Arellano et al., (G. R. No. L–8332, April 22, 1955) it was held that "* * * it is not the duty of the provincial fiscal conducting a preliminary investigation under the authority of Republic Act 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation." In another case, it has been held that the accused in a criminal case has no right to demand in a reinvestigation that the witnesses for the prosecution be recalled to be cross-examined (People *vs.* Ramilo, 52 Off. Gaz. No. 3, 1431).

As regards the contention that the information charges more than one offense, it may perhaps be admitted that the same could be made more definite and explicit, but, as the City Fiscal claims, it charges only the offense of introduction and use of falsified telegraphic messages, the other allegations being merely descriptive.

Petitioners seek to withdraw their plea to pave the way for their motion to quash on the two grounds above adverted to inasmuch as according to Section 10, Rule 113 of the Rules of Court "if the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same".

The granting of an application to withdraw or set aside a plea is largely discretionary on the part of the judge to whom it is addressed and his action thereon is not subject to review by certiorari unless grave abuse of discretion is shown (U. S. *vs.* Schneer, 7 Phil., 523; U. S. *vs.* Baluyot, 40 Phil., 385). We do not find such abuse of discretion in the present case. In the first place, the grounds of the motion to quash, as above pointed out, are far from being indubitable. In the second place, said motion was filed almost six months after arraignment and almost one year and a half after the filing of the information and only after the accused were notified of the trial on the merits. It is feared that to allow a further setback in the proceedings at this stage would nullify the real purpose and intent of the law to avoid delay and insure prompt and speedy disposition of criminal cases.

For the foregoing considerations, we find no sufficient justification for the issuance of the writs applied for, and the petition is hereby dismissed with costs against the petitioners.

SO ORDERED.

Paredes and *San Jose, JJ.*, concur.

Petition dismissed.